CLERK'S COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 524.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

THE CORONADO BEACH COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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a In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND DEFENDANT. } No. E–34.

Citation on writ of error.

UNITED STATES OF AMERICA, *ss:*

To The Coronado Beach Company, a corporation, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, D. C., on the 17th day of September, 1920, being within sixty days from the date hereof, pursuant to the writ of error allowed and filed in the office of the United States District Court, Southern District of California, Southern Division, in the suit numbered E–34, in the records of said court, wherein the United States of America is plaintiff in error and The Coronado Beach Company, a corporation, is defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said writ of error mentioned, should not be corrected and reversed, and why speedy justice should not be done the parties in that behalf.

Witness the honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 9th day of August, in the year of our Lord one thousand nine hundred and twenty.

TRIPPET,
Judge of the United States District Court,
Southern District of California, Southern Division.

b Received a copy of the within citation this 9th day of August, 1920.

MORRISON, DAME & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
READ G. DILWORTH,
JOE. E. WADHAM,
Attorneys for Defendant in Error.

(Endorsed:) No. E–34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Citation on writ of error. Filed Aug. 9, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND DEFENDANT. } No. E–34.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the District Court of the United States, Southern District of California, Southern Division, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court of the United States, Southern District of California, Southern Division, before you, or some of you, between the United States of America, plaintiff in error, and The Coronado Beach Company, a corporation, defendant in error, wherein a judgment was rendered against said plaintiff in error, for the sum of five million (5,000,000) dollars, manifest error hath happened, to the great damage of said plaintiff in error, as is said and appears by the complaint and its assignment of errors; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal distinctly and openly, you send the records, proceedings, and papers aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the city of Washington, D. C., together with this writ, so that you have the same at the said place, before the Justices
d aforesaid, on the 17th day of September, 1920, that the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court of the United States may cause further to be done therein to correct those errors which of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 9 day of August, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.] CHAS. N. WILLIAMS,
Clerk of the United States District Court,
Southern District of California, Southern Division.
R. S. ZIMMERMAN, *Deputy.*

Allowed by—
TRIPPET,
Judge of the United States District Court,
Southern District of California, Southern Division.

I hereby certify that a copy of the within writ of error was on the 9th day of August, 1920, lodged in the clerk's office of the said District

Court of the United States for the Southern District of California, Southern Division, for said defendant in error.

[SEAL.] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States for the Southern District of California.
R. S. ZIMMERMAN.

e (Endorsed:) No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Writ of error. Filed Aug. 9, 1920. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk.

1 *Names and addresses of attorneys.*

For plaintiff in error:
A. Mitchell Palmer, Attorney General of the United States, Washington, D. C.
George J. Denis, special assistant to the Attorney General, Los Angeles, California.
J. Robert O'Connor, United States attorney, Los Angeles, California.
For defendant in error:
Morrison, Dunne & Brobeck, Peter F. Dunne, Herbert W. Clark, San Francisco, California.
Read G. Dilworth, James E. Wadham, San Diego, California.

2 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, plaintiff, vs. THE CORONADO BEACH COMPANY, a corporation, claimant and defendant.	Bill of complaint.

To the judges of the District Court of the United States for the Southern District of California:

The United States, by the Attorney General thereof, brings this its bill of complaint against the Coronado Beach Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, residing therein.

And thereupon your orator complains and shows unto the court that the defendant, the Coronado Beach Company, is now and was at all the times in this complaint mentioned a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

Your orator further shows and alleges that the plaintiff is the owner of an easement, estate, and interest in and to the tract of land hereinafter described, for use for the defense or security of the Nation, and in connection therewith, as sites for permanent aviation stations for the Army and Navy and for aviation school purposes. That plaintiff is now, and ever since the first day of August, 1917, has been, in the possession, occupancy, and use thereof for the purposes above mentioned, under and by reason of an Executive order of the President of the United States, dated and issued on said first day of August, 1917, pursuant to an act of Con-
3 gress of July 27th, 1917 (c. 42, 40 Stat., 247), which said tract of land is situated in the county of San Diego, State of California, and is known, designated, and described as the whole of North Island, in the harbor of San Diego, California.

III.

Your orator further shows and alleges that the defendant, the Coronado Beach Company, a corporation, claims to have, own, or hold some right, title, estate, or interest in or to or some claim or demand upon said tract of land, or some part thereof, adverse to or in conflict with plaintiff's said easement, estate, and interest therein and thereto; but your orator alleges that said right, title, interest, claim, and demand of said defendant, in or to said tract of land, or any part thereof, if any it has, is subject and subordinate to said easement, estate, and interest of the plaintiff in said land for use for the defense or security of the Nation.

IV.

Your orator further shows and alleges that the public interest and necessity require that the possession and use of said tract of land, as aforesaid, be taken and maintained by plaintiff, permanently, for the purposes hereinbefore set forth, and that this court inquire into, and determine and adjudge any and all interests, estates, claims, or demands of said defendant in or to said tract of land, over and beyond any rights therein or thereto in said plaintiff; and that in the event this court shall find that said defendant has, owns, or holds any right, title, interest, or estate in or to said tract of land over and beyond plaintiff's said easement, estate, and interest therein and thereto, that this court cause such right, title, interest, or estate of said defendant to be appraised, and the value thereof deter-
4 mined and adjudged, and that the same be condemned for public use and for the purposes hereinbefore stated.

V.

Your orator further shows and alleges that the names of all the claimants of the said tract of land, or any part thereof, or of any estate or interest therein or thereto, sought to be determined and adjudged, and if necessary appraised and condemned in this action, so far as known to your orator, are set forth in the title of this complaint.

VI.

Your orator further shows and alleges that the description of said tract of land set forth in paragraph II hereof includes the whole of an entire parcel or tract of real property.

Wherefore your orator having no plain, speedy, or adequate remedy at law, prays that the said defendant, the Coronado Beach Company, a corporation, be required by answer to set forth the nature and extent of its claim, estate, and interest in or to the said tract of land, or any part thereof, over and beyond any rights therein or thereto in plaintiff; and that such claim, estate, or interest of said defendant, if any it has, be determined and adjudged to be subject and subordinate to plaintiff's said easement, estate, and interest therein and thereto; and that the defendant be enjoined from claiming or asserting any right, title, interest, or estate in or to said tract of land adverse to or in conflict with plaintiff's said easement, estate, and interest therein and thereto.

Your orator prays that in the event the court shall find that said defendant has, owns, or holds any right, title, interest, or estate in or to, or claim or demand upon said tract of land, or any part thereof, over and beyond any rights therein or thereto in plaintiff, that the court shall cause such right, title, interest, and estate of defendant, and the whole thereof, to be appraised, and the value thereof determined and adjudged; and that upon payment to said defendant, or into court for it, of the value of the same, as so determined, together with interest thereon at the rate of six per centum per annum from the date the possession of said tract of land was taken by plaintiff as herein alleged, that the court will make and enter a proper decree condemning any and all such estate or interest of defendant in or to said tract of land, for public use for the defense or security of the Nation, and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, and vesting title in fee simple to said land in the United States.

Your orator prays that a writ of subpoena be issued out of and under the seal of this honorable court, directed to the Coronado Beach Company, a corporation, commanding it, on a certain day, and under a certain penalty to be inserted, to be and appear before this honorable court, and then and there to answer the premises, and to abide such further order and decree as may be agreeable to justice.

Your orator waives answer under oath.

Your orator prays for such other and further relief as to the court may seem equitable and for costs of this suit.

And your orator will ever pray.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff.

6 (Endorsed:) No. E–34, Eq. In the District Court of the United States for the Sou. Dist. of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, a corporation, claimant and defendant. Bill of complaint. Condemnation proceedings for aviation stations. Filed Aug. 7, 1919. Chas. N. Williams, clerk, by Maury Curtis, deputy clerk.

7 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT and defendant.	No. E–34. In Equity.

Answer of Coronado Beach Company.

Now comes the defendant, Coronado Beach Company, and for answer to the complaint herein admits, denies, and alleges as follows:

I.

Answering the allegations of paragraph I of the complaint herein, defendant admits that it now is and at all times in the complaint mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

Answering the allegations of paragraph II of the complaint herein, defendant denies that plaintiff is the owner of an easement, estate, and interest in and to, or of an easement, estate, or interest in or to the tract of land described in the complaint herein for use for the defense or security of the Nation, or for any purpose or at all, and in connection therewith, or in connection therewith, as sites for permanent aviation stations for the Army and Navy and for aviation school pur-

poses, or for permanent aviation stations for the Army or Navy, or for aviation school purposes, or for any purpose or at all.

8 Admits that plaintiff is now, and ever since the first day of August, 1917, has been in the possession, occupancy, and use of the tract of land described in the complaint, for the purposes alleged in the said complaint, under and by reason of an Executive order of the President of the United States, dated and issued on the said first day of August, 1917, pursuant to an act of Congress approved July 27, 1917.

Admits that said tract of land is situated in the county of San Diego, State of California, and is known, designated, and described as the whole of North Island, in the harbor of San Diego, California.

III.

Answering the allegations of paragraph III of the said complaint, defendant admits that it claims to have, own, and hold some right, title, estate, and interest in and to, and some claim and demand upon said tract of land and all thereof, adverse to and in conflict with the alleged easement, estate, and interest of plaintiff therein or thereto. And in this behalf, defendant alleges that at all the times in the complaint mentioned it has been and now is the sole and exclusive owner in fee simple absolute, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description of plaintiff, in or to the same, or any part or parcel thereof, for any purpose whatsoever, of all and singular the tract of land and premises mentioned and described in the complaint herein, and situated in the county of San Diego, State of California, and known, designated, and described as the whole of North Island, in the harbor of San Diego, California. And defendant denies that its said right, title, interest, claim, and demand in or to said tract of land or that its right, title, interest, claim, or demand in or to said tract of land, or any

9 part thereof, is subject and subordinate, or subject or subordinate, to said alleged easement, estate, and interest, or to said alleged easement, estate, or interest, of plaintiff in said land for the defense or security of the Nation, or for any purpose or at all.

IV.

Answering the allegations of paragraph IV of the said complaint, defendant denies that the public interest and necessity or the public interest or necessity require or requires that the possession and use, or possession or use, of said tract of land, or any thereof, be taken and maintained, or taken or maintained, by plaintiff permanently, or at all, for the or any purposes set forth in the complaint herein.

V.

And further answering the complaint of plaintiff, defendant alleges that the value of the property, land and premises sought to be

condemned by plaintiff amounts to the sum of seven million five hundred thousand dollars ($7,500,000.00), and that in the event said property, land and premises, described in the complaint herein, sought to be condemned in this action, are condemned as prayed herein, this defendant will be damaged in the sum of seven million five hundred thousand dollars ($7,500,000).

Second defense.

And for another and second defense, to the bill of complaint herein, defendant alleges:

I.

That on the 20th day of April, 1852, and under and pursuant to the terms and provisions of an act of the Congress of the United States, approved March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and of acts amendatory thereof, Frederick Billings, James R. Bolton, and Henry W. Halleck filed their petition with the board of commissioners on private land claims in California, wherein and whereby they presented to the said commissioners for confirmation their claim to that certain tract of land and real estate in the county of San Diego and State of California known and described as follows, to wit:

The island or peninsula of San Diego, situated in said county of San Diego, and bounded on the north by the estero of the port of San Diego, towards the town; on the east by the end of the ranch of San Augustin Melijo; on the south by the sea; and on the west by the anchorage for ships.

That thereafter such proceedings were had by and before said board of commissioners concerning said claim, which said claim was numbered 188 on the docket of said board; that on October 31st, 1854, said board of commissioners by decree rendered, rejected and refused to confirm said claim.

II.

That within six (6) months after the said decision by said board of commissioners on the said claim No. 188, and under and by virtue of the terms and provisions of the said act of Congress approved March 3, 1851, and of the acts amendatory thereof, the said Frederick Billings, James R. Bolton, and Henry W. Halleck filed with the clerk of the District Court of the United States for the Southern District of California, that being the District Court of the district in which the land described in this second defense was situated, notice of their intention to prosecute an appeal from the decision of said board of commissioners on said claim No. 188.

III.

That on September 22, 1855, and under and by virtue of the terms and provisions of the said act of Congress and of the acts
11 amendatory thereof, the said Frederick Billings, James R. Bolton, and Henry W. Halleck presented to and filed in the District Court of the United States for the Southern District of California, that being the District Court of the district in which the land described in this second defense was situated, their petition setting forth fully the nature of their claim to the lands hereinabove in this second defense described, and the names of the original and then claimants thereto, and containing a deraignment of the title of the said claimants to said land, together with a transcript of the report of the said board of commissioners and of all the documentary evidence and testimony of the witnesses on which said claim was founded, and prayed the said District Court to review the decision of the said board of commissioners on said claim No. 188 and to decide on the validity thereof.

That the said petition so presented to and filed with the said District Court as aforesaid was filed in cause number 257 on the docket of said court, and that the title of said cause was "Frederick Billings et al., assignees of Bezer Simmons, vs. The United States."

That thereafter and on December 15, 1855, summons in said cause Number 257 issued out of and under the seal of said District Court directed to the United States district attorney for the Southern District of California, and, together with a copy of the said petition, was served on the said United States district attorney at Los Angeles, California, on December 26, 1855, as is shown by the return of the United States marshal thereon. That said summons and return were filed and now remain on file in said cause Number 257 and are hereby referred to.

That on January 4, 1856, the said United States district attorney for the Southern District of California filed on behalf
12 of the United States in said cause Number 257 then pending in said District Court an answer to the said petition, denying each and every allegation of the said petition, and denying the validity of the title of the said Frederick Billings, James R. Bolton, and Henry W. Halleck to the land and premises described in the said petition, which said land and premises are the same land and premises hereinabove in this second defense described.

That hereafter, in said cause number 257 on the docket of said District Court, such proceedings were had that the said cause came on regularly for trial and was duly and regularly tried on the merits thereof, and argued by counsel for the respective parties, and thereupon the said court, at the December term thereof, in the year 1856, duly and regularly made and entered its judgment and decree therein ordering, adjudging, and decreeing as follows, to wit:

"This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land

claims in California, upon the transcript of the proceedings and decision of said board and the papers and evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard it is:

"Ordered, adjudged, and decreed that the decision of said board of land commissioners rejecting the claims of the appellants, Frederick Billings and others, be, and the same is hereby, reversed.

"And it is further ordered, adjudged, and decreed that the title of the appellants, Frederick Billings and others, to the land claimed by them, as set forth and described in their petition to the said board of commissioners and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

"The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the "Island or Peninsula of San Diego," is situated in the county of San Diego, and is bounded on the north by the estero of the port of San Diego towards the town, east by the end of the ranch of San Augustin Melijo, south by the sea, and west by the anchorage for ships, according to the documents of title and map to which reference is had; if the quantity within said boundaries is less than two square
13 leagues, then the confirmation hereby made is for the whole tract, but if the quantity within said boundaries exceeds two square leagues, then the confirmation hereby made is made for two square leagues and no more."

That the said judgment and decree so made as aforesaid was filed in said cause number 257 on January 12, 1857, and entered at page 130 of judgments and decrees of the United States District Court for the Southern District of California in the volume thereof containing the judgments and decrees of said court for the period beginning September 10, 1853, and ending December 9, 1865, to which record reference is hereby made.

IV.

That after the rendition and entry of the judgment and decree aforesaid by the said district court, the United States appealed from said judgment and decree to the Supreme Court of the United States, and in that court such proceedings were had that at the December term thereof in the year 1863 it was ordered, adjudged, and decreed by said Supreme Court that the said appeal be, and the same was then, dismissed; and thereupon a mandate in the usual form was issued out of and under the seal of the said Supreme Court, directed to the judge of the District Court of the United States for the Southern District of California, directing and commanding that in the said cause No. 257 on the docket of the said District Court for the Southern District of California, such further proceedings should be had as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

V.

That at the regular April term of the United States District
14 Court for the District of California, in the year 1867, the said mandate of the Supreme Court of the United States was presented to said United States District Court for the District of California and filed in said cause No. 257, and it was thereupon ordered, adjudged, and decreed by the United States district court that the appeal theretofore sued out and allowed by the United States from the decree of confirmation rendered in the said cause No. 257 by the late United States District Court for the Southern District of California be, and the same was then, dismissed, and that the said Frederick Billings, James R. Bolton, and Henry W. Halleck be, and they were thereby, allowed to proceed under said decree of confirmation as under a final decree. That the said order, so made as aforesaid, was filed in said cause No. 257 in the United States District Court for the District of California and now remains on file therein; and that the said mandate also now remains on file in said cause in said court.

VI.

That at a stated term of the United States District Court for the District of California, held at San Francisco on the 7th day of May, 1867, such proceedings were duly and regularly had by said court in the said cause No. 257; that the said court duly and regularly ordered that Archibald C. Peachy and William H. Aspinwall be substituted in the places and lieu of Frederick Billings, James R. Bolton, and Henry W. Halleck, and the said cause was ordered revived in the names of said Archibald C. Peachy and William H. Aspinwall as claimants and confirmees therein, and all other proceedings therein were ordered to be had in their names. That the said order, so made as aforesaid, was filed in said cause on May 7, 1867, and now remains on file therein.

15 VII.

That the land, real estate, and premises described in plaintiff's complaint herein are, and at all times have been, a part of, and within the exterior boundaries of, the land, real estate, and premises described hereinabove in this second defense; that heretofore, by divers mesne conveyances made. executed, and delivered to it and to its predecessors in interest and title, the defendant herein became and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises hereinabove in this second defense described; that the cause of action sued upon in said cause No. 257, and the issues adjudicated and determined therein as aforesaid, were and are identical with the cause of action sued upon in and the issues now sought to be raised by the complaint of plaintiff herein; that the decree of confirmation, so as aforesaid rendered and

entered by the United States District Court for the Southern District of California, in said cause No. 257, was, is, and remains a final decree upon the merits of said cause and between the parties thereto and their privies; and that the said court had full power, authority, and jurisdiction over the said parties and the subject matter of said cause. And that the decree of said district court, confirming the title to the said island or peninsula of San Diego, is and constitutes a bar to so much of the present action of plaintiff as seeks to ascertain or determine in plaintiff an easement, estate, or interest therein or thereto for any purpose whatsoever, and the issues tendered by the complaint herein as to such matters are res adjudicata as between the parties hereto.

VIII.

16 That under and by virtue of the terms and provisions of an act of the Congress of the United States approved July 27, 1866, entitled "An act in relation to the District Courts of the United States in the States of California and Louisiana" (14 Statutes at Large, page 300), said United States District Court for the District of California was vested with the power and jurisdiction theretofore had and exercised by the said District Court for the Southern District of California, and had full power, jurisdiction, and authority to proceed as aforesaid in said cause, No. 257, and to make and enter the said orders and decrees therein.

Third defense.

And for another and further defense to the bill of complaint herein, defendant alleges:

I.

That on the 11th day of June, 1869, the plaintiff herein made, executed, and delivered to Archibald C. Peachy and William H. Aspinwall its certain instrument in writing, commonly called a patent, wherein and whereby it gave and granted unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever, all and singular the following described land and premises situate, lying, and being in the County of San Diego and State of California, and described as follows, to wit:

Lot No. forty (40) in township seventeen (17) south of range three (3) west; lot No. thirty-seven (37) in township eighteen (18) south of range three (3) west; and lot No. thirty-eight (38) in township eighteen (18) south of range two (2) west, of the San Bernardino meridian, containing four thousand one hundred and eighty-five and forty-six one-hundredths (4,185.46) acres.

That the said patent, so made, executed and delivered as aforesaid, was and is recorded in volume 7 at pages 246 to 249, inclusive, in the record of patents in the General Land Office of plain-
17 tiff, and was filed for record in the office of the recorder of the

county of San Diego, in the State of California, on July 6th, 1869, and was recorded in book 1 of patents therein, at pages 55 and following, reference to which records, for a more complete description of the said land and patent is hereby made.

II.

That the land, real estate, and premises described in plaintiff's complaint herein are, and at all times have been, a part of, and within the exterior boundaries of, the land, real estate, and premises described hereinabove in this third defense; and that heretofore and since the issuance, delivery, and recording of the said patent, by divers mesne conveyances made, executed, and delivered to it and to its predecessors in interest and title, the defendant herein became and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described in plaintiff's complaint.

Fourth defense.

And for another and further defense to the bill of complaint herein, defendant alleges:

I.

That on the 11th day of June, 1869, the plaintiff herein made, executed, and delivered to Archibald C. Peachy and William H. Aspinwall its certain instrument in writing, commonly called a patent, wherein and whereby it gave and granted unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever, all and singular the following described land and premises situate, lying, and being in the county of San Diego, and State of California, and described as follows, to wit:

17½ Lot No. forty (40) in township seventeen (17) south of range three (3) west; lot No. thirty-seven (37) in township eighteen (18) south of range three (3) west; and lot No. thirty-eight (38) in township eighteen (18) south of range two (2) west, of the San Bernardino meridian, containing four thousand one hundred and eighty-five and forty-six one-hundredths (4,185.46) acres.

That the said patent, so made, executed, and delivered as aforesaid, was and is recorded in volume 7 at pages 246 to 249, inclusive, in the record of patents in the General Land Office of plaintiff, and was filed for record in the office of the recorder of the county of San Diego, in the State of California, on July 6th, 1869, and was recorded in book 1 of patents therein at pages 55 and following, reference to which records, for a more complete description of the said land and patent, is hereby made.

II.

That the land, real estate, and premises described in plaintiff's complaint herein are and at all times have been a part of and within the exterior boundaries of the land, real estate, and premises de-

scribed hereinabove in this fourth defense; that heretofore and since the issuance, delivery, and recording of the said patent, by divers mesne conveyances made, executed, and delivered to it and to its predecessors in interest and in title, the defendant herein became the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described hereinabove in this fourth defense, and now is the sole and exclusive owner in fee simple absolute of all and singular the land, real estate, and premises described in plaintiff's complaint.

III.

That the plaintiff herein ought not to have or maintain against this defendant the cause of action attempted to be set out in the
18 complaint herein for the determination of its alleged easement, estate, and interest in and to the tract of land described in the said complaint, because the said supposed cause of action, if any there be, accrued more than five (5) years next preceding the 4th day of March, 1896, and the patent hereinabove in this defense mentioned and described, issued prior to March 3, 1891, to wit, on June 11, 1869, and the said claim is barred by the provisions of the act of Congress approved March 3, 1891, appearing in 29 United States Statutes at Large, at page 1099, and acts amendatory thereof.

Wherefore this defendant prays that it may be adjudged and decreed to be the sole and exclusive owner, in fee simple absolute, of the land, real estate, and premises described in plaintiff's complaint, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character *of* description, of plaintiff in or to the same, or any part or parcel thereof, whether for use for the defense or security of the Nation, or for any purpose whatsoever; that the property in the complaint herein sought to be condemned be not condemned, and that the condemnation thereof be denied; that if said condemnation be had, that the damages to this defendant, and the value of the said land be fixed and assessed at seven million five hundred thousand dollars ($7,500,000.00); that judgment in favor of this defendant and against plaintiff, if said land be condemned, be rendered for the sum of seven million five hundred thousand dollars ($7,500,000.00); for its costs in this behalf expended, and for such other and further relief as to the court may seem meet, equitable, and proper in these premises.

MORRISON, DUNNE & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
Solicitors and Attorneys for Defendant Coronado Beach Company.

19 (Endorsed:) In equity. No. E-34. United States District Court, Southern Division, Southern District of California. United States of America, plaintiff, *vs.* Coronado Beach Company, a

corporation, claimant and defendant. Answer of Coronado Beach Company. Filed Oct. 25, 1919. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk. Morrison, Dunne & Brobeck, Crocker Building, San Francisco, Cal., attorneys for claimant and deft.

20 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND defendant.	No. E–34. In equity.

Reply to answer of defendant.

Now comes the plaintiff, United States of America, and for reply to the counter-claims set forth in the answer of the defendant herein, denies and alleges as follows:

I.

Plaintiff denies that defendant at all or any of the times in the complaint mentioned, or at any other time or times, has been or now is the sole or exclusive owner in fee simple absolute, free or clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description, of plaintiff, in or to the tract of land mentioned and described in the complaint, or any part thereof; but alleges that the land described in the complaint was granted to one Pedro Carrillo by the then governor of California, Pio Pico, on May 15th, 1846, and that said grant was so made by said governor pursuant to, under the conditions of, and subject to the provisions of, the act of the Mexican Congress of August 18th, 1824, and the rules and regulations of said Congress of November 21st, 1828, and particularly under the provisions of article 5 of said act of August 18th, 1824, and article 8 of said act of November 21st, 1828.

21 II.

Plaintiff denies that the value of the property, land, and premises sought to be condemned by plaintiff amounts to the sum of $7,500,000.00, or to any other sum of money in excess of $———; and denies that in the event said property, land, and premises described in the complaint herein sought to be condemned in this action are condemned as prayed herein said defendant will be damaged in the sum of $7,500,000.00, or in any other sum of money in excess of said sum of $———.

III.

Plaintiff denies that the cause of action referred to in Paragraph VII of the second defense set forth in said answer, and sued upon in cause No. 257 on the docket of the United States District Court for the Southern District of California, or the issues adjudicated or determined therein, were or are identical with the cause of action sued upon in, or the issues now sought to be raised, or now raised, by the complaint of plaintiff herein. And plaintiff denies that the final decree of confirmation rendered and entered by the said United States District Court in said cause No. 257 was, is, or remains a final or other decree upon the merits of said cause, or between the parties thereto or their privies; or that the said court had full power, authority, or jurisdiction over the said parties or the subject matter of said cause, if thereby defendant intends to allege that the court in said Paragraph VII, referred to, had the power, authority, or jurisdiction to enter a decree in said action confirming to the petitioners therein a fee simple title absolute, or any other or further title than that granted to the predecessor in interest of said defendant, to wit, the said grantee under the said Mexican grant of May 15th, 1846; and plaintiff further denies that the decree of said
22 United States District Court in said cause No. 257, confirming the title to the said island or peninsula of San Diego, is or constitutes a bar to so much of the present action of plaintiff as seeks to ascertain or determine in plaintiff an easement, estate, or interest therein or thereto, or to any part of plaintiff's cause of action herein; and denies that the issues tendered by the complaint herein as to such or any matters are res adjudicata as between the parties hereto.

IV.

Plaintiff denies that on the 11th day of June, 1869, or at any other time, the plaintiff made, executed, or delivered to Archibald C. Peachy or William H. Aspinwall its certain, or any, instrument in writing wherein or whereby it gave or granted unto the said Archibald C. Peachy or William H. Aspinwall, or to their heirs or assigns, any greater interest, right, title, or estate in or to the land described in paragraph I of the third defense set forth in said answer than the interest, right, title, and estate therein adjudged and confirmed in and by the decree of confirmation so entered in said cause No. 257, in said United States district court; which said right, title, interest, and estate plaintiff alleges was at all times, and now is, subject and subordinate to the easement and estate of plaintiff therein. And plaintiff denies that since the issuance of the said patent, or at any time, by divers, or any, mesne conveyances made, executed, or delivered to it, or to its predecessors in interest or title, the defendant herein became or now is the sole or exclusive owner in fee simple absolute of all or singular the land, real estate, or premises described in plaintiff's complaint.

V.

23 Plaintiff denies that the said claim and cause of action set forth in the complaint herein, or any part thereof, is barred by the provisions of the act of Congress approved March 3, 1891, appearing in 29 United States Statutes at Large, at page 1099, or by any acts amendatory thereof, or at all.

Wherefore plaintiff prays for judgment according to the prayer set forth in its bill of complaint herein.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California.
Attorneys for Plaintiff.

24 (Endorsed:) In equity. No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Coronado Beach Company, a corporation, claimant and defendant. Reply to answer of defendant. Filed Oct. 30, 1919. Chas. N. Williams, clerk; by R. S. Zimmerman, deputy clerk. Geo. J. Denis, 832 Van Nuys Building, Los Angeles, Cal., attorney for plaintiff.

25 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CORONADO BEACH COMPANY, A CORPORATION, defendant.
} No. E-34, Eq.

Judgment.

The above-entitled cause came regularly on for trial before the above-entitled court, A Mitchell Palmer, Esq., George J. Denis, Esq., and J. Robert O'Connor, Esq., appearing as attorneys for plaintiff, and Morrison, Dunne & Brobeck, Peter F. Dunne, Esq., Herbert W Clark, Esq., R. G. Dilworth, Esq., and Jas. E. Wadham, Esq., appearing as attorneys for the defendant. Thereupon a jury of twelve persons was duly selected, empaneled, and sworn to try said cause. It was agreed in open court by oral stipulation of counsel of the respective parties hereto, which said stipulation was noted in the minutes of this court, that for the purpose of assessing compensation the right thereof shall be deemed to have accrued on the 1st day of August, 1917, and that the actual value at that date of the
26 property hereinafter described shall be the measure of compensation for said property. Thereupon evidence, oral and docu-

mentary, was adduced by plaintiff and defendant. After hearing the evidence, the arguments of counsel, and the instructions of the court, the said cause was submitted to the jury. The jury thereupon rendered its verdict and returned its answers to the special interrogatories directed by the court, as follows:

In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CORONADO BEACH COMPANY, A CORPORATION, defendant.

Verdict.

We, the jury in the above-entitled cause, find that the fair market value of the whole of North Island, as of August 1st, 1917, was $5,000,000 (five million dollars).

Dated April 21, 1920.

MELVILLE KLAUBER,
Foreman.

27 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CORONADO BEACH COMPANY, A CORPORATION, defendant. No. E-84.

Special interrogatories directed by the court.

No. 1. What was the fair market value on August 1, 1917, of the land lying above high-water mark, containing 1,232.93 acres, more or less, referred to as mesa land?

Answer. $4,625,000.00 (four million six hundred twenty-five thousand).

No. 2. What was the fair market value on August 1, 1917, of the 297.24 acres lying above high-water mark, referred to as meadow, marsh, and beach land?

Answer. $45,000.00 (forty-five thousand).

No. 3. What was the fair market value on August 1, 1917, of the lands lying below high-water mark, consisting of 663.3 acres, more or less, referred to as tide or submerged lands?

Answer. $330,000.00 (three hundred thirty thousand).

MELVILLE KLAUBER, *Foreman.*

Said verdict and the special interrogatories and the answers
28 thereto were received by the clerk and duly filed and entered by him in the minutes of the court.

Thereafter, it appearing to the court that plaintiff was at the time of trial, and since the 1st day of August, 1917, had been, in possession of the land, real estate, and premises hereinafter described for the purposes mentioned in the complaint in this cause, on motion of defendant, the court rendered the following judgment:

Now, therefore, in consideration of the foregoing premises and the law, it is hereby considered, ordered, and adjudged as follows:

I.

That the defendant, Coronado Beach Company, a corporation, was, at the time of the commencement of this action, ever since has been, and now is the sole and exclusive owner in fee simple of all and singular the tract of land hereinafter described, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description of plaintiff, the United States of America, in or to the same, or in or to any part or parcel thereof, for use for the defense or security of the Nation, or for any purpose whatsoever.

II.

That the plaintiff, United States of America, has no easement, estate, interest, right, title, claim, or demand of any kind, character, or description in or to the tract of land hereinafter described, or in or to any part or parcel thereof for use for the defense or
29 security of the Nation, or for any purpose whatsoever, or at all.

III.

That the public interest and necessity require that the possession and use of the tract of land hereinafter described, and the whole thereof, be taken and maintained by plaintiff, permanently, and that the said tract of land, and the whole thereof, be condemned by plaintiff for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation-school purposes.

IV.

That the said use to which the said tract of land is to be applied is a use authorized by law, and the taking thereof is necessary to such use.

V.

That the area of the tract of land herein sought to be condemned was on August 1, 1917, and now is two thousand one hundred three and forty-seven hundredths (2,103.47) acres.

VI.

That of the total number of acres embraced within the tract of land herein sought to be condemned, one thousand two hundred thirty-two and ninety-three hundredths (1,232.93) acres, more
30 or less, were on August 1, 1917, and now are, mesa land, lying above high-water mark; two hundred seven and twenty-four hundredths (207.24) acres were on August 1, 1917, and now are, meadow, marsh, and beach land, lying above high-water mark; and six hundred sixty-three and three-tenths (663.3) acres, more or less, were on August 1, 1917, and now are, tide or submerged lands, lying below high-water mark.

VII.

That the fair market value of the tract of land herein condemned, and of the whole thereof, on the 1st day of August, 1917, was five million (5,000,000) dollars.

VIII.

That the fair market value on August 1, 1917, of the said mesa land, lying above high-water mark, consisting of one thousand two hundred thirty-two and ninety-three hundredths (1,232.93) acres, more or less, was four million six hundred twenty-five thousand (4,625,000) dollars.

IX.

That the fair market value on August 1, 1917, of the said meadow, marsh, and beach land, lying above high-water mark, consisting of two hundred seven and twenty-four hundredths (207.24) acres, was forty-five thousand (45,000) dollars.

31 X.

That the fair market value on August 1, 1917, of the said tide or submerged lands lying below high-water mark, consisting of six hundred sixty-three and three-tenths (663.3) acres, more or less, was three hundred thirty thousand (330,000) dollars.

XI.

That the plaintiff, within thirty days after the entry of this judgment, shall pay the defendant, Coronado Beach Company, a corporation, or into court for it, the sum of five million (5,000,000) dollars, that being the amount of the fair market value of the property sought to be condemned herein by plaintiff for the uses and purposes aforesaid.

XII.

That upon paying the sum of five million (5,000,000) dollars, hereinabove directed to be paid, the plaintiff, United States of America, will be entitled to a final order of condemnation, particularly describing the property condemned, and stating the purposes of such condemnation, which purposes are hereinbefore set forth.

XIII.

That upon the making, entering, and recording of said final order of condemnation, the plaintiff herein shall have full right and
32 liberty of using the tract of land hereinafter described, and the whole thereof, for national defense, and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes.

XIV.

That the tract of land herein sought to be condemned is situate in the harbor of San Diego, in the county of San Diego and State of California, and is known, designated, and described as the whole of North Island, in the harbor of San Diego, California, excepting therefrom those certain pieces or parcels of land within the exterior limits of the said North Island which are described in that certain deed from Coronado Beach Company, a corporation, to the United States of America, recorded September 12, 1901, in book No. 312 of deeds at page 185, et seq., of the records of said county of San Diego, California, containing thirty-eight and fifty-six hundredths (38.56) acres, more or less, and in that certain deed from Coronado Beach Company, a corporation, to the United States of America, recorded in book No. 211 of deeds at page 381, et seq., of the records of said county of San Diego, California, containing eighteen and eighty-five hundredths (18.85) acres, more or less.

Done in open court this 1 day of June, 1920.

TRIPPET, *Judge.*

Approved as to form.

GEO. J. DENIS,
Special Assistant to the Attorney General.

Judgment entered and recorded June 1, 1920.

CHAS. N. WILLIAMS,
Clerk U. S. District Court,
Southern District of California.

33 (Endorsed:) E–34 Eq. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* Coronado Beach Company, a corporation, defendant. Judgment. Filed June 1, 1920. Chas. N. Williams, clerk. Morrison, Dunne & Brobeck, attorneys at law, Crocker Building, San Francisco.

34 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT and defendant. } No. E-34.

Notice of intention to move for new trial.

To the above-named defendant and to Messrs. Morrison, Dunne & Brobeck, Peter F. Dunne, Esq., Herbert W. Clark, Esq., R. G. Dilworth, Esq., and James E. Wadham, Esq., its attorneys:

You and each of you will please take notice that the plaintiff herein, United States of America, intends to move the court to set aside the verdict of the jury and judgment in the above-entitled action, given, rendered, and entered herein on the 21st day of April, 1920, and for a new trial in said action, on the following grounds, to wit:

1. Irregularities in the proceedings of the court, by which the plaintiff was prevented from having a fair trial.

2. Irregularities in the proceedings of the jury, by which the plaintiff was prevented from having a fair trial.

3. Irregularities of, and on behalf of the defendant, by which the plaintiff was prevented from having a fair trial.

4. Misconduct on the part of the jury, by which the plaintiff was prevented from having a fair trial.

5. Excessive award and damages appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict of the jury or judgment.

7. That the verdict of the jury is against law.

8. That the judgment entered thereon is against law.

35 9. Errors in law occurring at the trial and excepted to by the plaintiff.

Said motion will be made and based upon the pleadings, files, records, and exhibits in said cause; and upon the minutes of the court, and upon affidavits to be filed.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff.

Points and authorities:

Act of Congress July 29, 1917 (c. 42, Stat., 247).
Garton *v.* Stern, 121 Cal., 347.
Harper *v.* Hildreth, 99 Cal., 265.
Union Collection Co. *v.* Oliver, 162 Cal., 755.
Condee *v.* Gyer, 126 Cal., 546.
Churchill *v.* Flournoy, 127 Cal., 355.
Sections 656 to 660, inclusive, Code of Civil Procedure of the State of California.

36 (Endorsed:) No. E–34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Notice of intention to move for new trial. Filed Apr. 30, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

37 At a stated term, to wit, the January, A. D. 1920 term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles, on Tuesday, the 1st day of June, in the year of our Lord one thousand nine hundred and twenty.

Present: The Honorable Oscar A. Trippet, district judge.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CORONADO BEACH COMPANY, DEFENDANT.	No. E–34. Equity, S. D.

This cause coming on at this time for hearing on (1) on motion to rescind, vacate, and set aside decree; and (2) for motion for new trial; Geo. J. Denis, Esq., special assistant to the Attorney General; and Gordon Lawson, Esq., assistant U. S. attorney, appearing as counsel for the plaintiff; and Herbert W. Clark, Esq., appearing as counsel for the defendant; and W. C. Wren appearing as shorthand reporter of the proceedings and testimony; and a judgment having been signed by the court in open court, and directed to be filed herein; and recorded in judgment book No. 2 for the Southern Division, at pages 565 to 572, both inclusive; and Geo. J. Denis, Esq., special assistant to the Attorney General, having presented the argument in support of motions to rescind, vacate, and set aside decree, and of motion for new trial, and

Now, at the hour of 11.28 o'clock a. m. the court having taken a recess; and

Now, at the hour of 11.36 o'clock a. m. the court having reconvened, and counsel for respective parties being present as before; and W. C. Wren, being present as shorthand reporter; and

Geo. J. Denis, Esq., of counsel, as aforesaid, for the plaintiff, having resumed the argument in support of the aforesaid motions, and

38 Now, at the hour of 12.00 o'clock noon, it is ordered that a recess be taken until the hour of 2 o'clock p. m. of this day, and this cause is continued to that time.

Now, at the hour of 2 o'clock p. m. the court having reconvened, and counsel for respective parties being present as before; and W. C. Wren being present as shorthand reporter; and

Geo. J. Denis, Esq., of counsel, as aforesaid, for the plaintiff, having presented further arguments in support of said motions to rescind, vacate, and set aside the decree, and for motion for new trial; and

Herbert W. Clark, Esq., of counsel, as aforesaid, for the defendant, having presented the argument in opposition to said motions, and

Geo. J. Denis, Esq., of counsel, as aforesaid for the plaintiff, having replied thereto; and

The court at this time gives its oral opinion, and orders that said motions to rescind, vacate, and set aside the decree, and motion for new trial be, and they hereby are, denied.

39 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant. } No. E–34.

Proposed bill of exceptions.

Be it remembered, that this action came on regularly for trial on April 15, 1920, in the above-entitled court, Hon. Oscar A. Trippet, judge presiding; plaintiff appearing by its counsel, A. Mitchell Palmer, Attorney General of the United States; Geo. J. Denis, Esq., special assistant to the Attorney General; and Robert O'Connor, United States attorney for Southern District of California; and defendant appearing by its counsel, Messrs. Morrison, Dunne & Brobeck, Peter F. Dunne, Esq., Herbert W. Clark, Esq., R. G. Dilworth, Esq., and James E. Wadham, Esq.

Whereupon a jury was duly impaneled and sworn to try said cause, and the following proceedings were had:

It was stipulated that the verdict of the jury in this case should be a unanimous verdict.

Mr. DENIS. Now, the preliminary question, I think, your honor, ought to be definitely settled between us as to the area—the acreage of the upland, or so-called tideland, and of the submerged lands—because if we can not agree upon that it will be necessary for us to send to Los Angeles for the district engineer with the maps of the survey to establish these facts.

I need not call your honor's attention to the fact that at no time since January 5th, when the matter was discussed in your honor's chambers, has this question of area been suggested, not even in
40 the trial briefs submitted to us by counsel for the defendant day before yesterday morning; and it comes, I frankly say,

with complete surprise to the Government that we are to try the question of the value of lands that the Government is not seeking to condemn. In other words, concretely put, the Government is seeking to condemn North Island as it occupied it on August 1, 1917, under the Executive order of the President.

Mr. DUNNE. Mr. Denis, I think that we can get that exact acreage for you some time this afternoon.

Mr. DENIS. I would like very much to have it now, because every minute's delay means my being compelled to ask the court for time to bring down Major Downey, of the War Department, with the maps. I am sure that we can agree if it is humanly possible, but I suggest that it is possible that we may not agree.

Plaintiff offered in evidence the petition of Pedro Carrillo to the governor of California; the reports on the Carrillo petition; the grant of land to Carrillo by Pio Pico, governor of California; the petition of Billings and others to the Court of Private Land Claims for confirmation of the grant made by Pio Pico; the judgment of such Court of Private Land Claims; the decree of confirmation by the District Court of the United States upon such petition of Billings and others; the patent of the United States to Peachy and Aspinwall, successors in interest of Pedro Carrillo in the grant above referred to; the notice of appeal to the Supreme Court of the United States of case 257, the case of Billings and others against the United States, the dismissal of such appeal under orders of the United States Attorney General; which said documents so offered read as follows:

41 PLAINTIFF'S EXHIBIT 1.

Pedro C. Carrilio, native of this Department of California, and resident of this port, before you with due respect and in conformity with law, appears and says: That being in want of a proper land for the breeding of cattle, both large and small, and horses, and desirous of encouraging these (kinds of) property, he names a vacant land in the limits of this port, on the southern part, known by the name of "La Isla," or peninsula, which the port of San Diego forms: The which contains a little more or less, two leagues or "siteos," according to the map which he transmits, said land being fit for a cattle farm, for which purpose he asks for it, and is bounded on the north by the "Estero" Creek of same port, east by the place of Don Aguitino Meliso, south by the sea, and west by the bay and ship anchorage; and he prays you that after the informations which you may think proper to take, you will be pleased to grant it to him, passing the expediente to his excellency the governor of the department, that he may have the goodness to order the corresponding title of ownership to be issued to him.

Wherefore I pray and beseech you to be pleased to provide for the manner and form which I have asked, in which I will receive grace

and favor. Swearing not to act from malice and whatever else may be necessary, admitting this on common paper for want of stamped.

San Diego, April 21st, 1846.

(Signed) PEDRO C. CARRILLO.

SAN DIEGO, *April 21', 1846.*

The 2d magistrate of this town will be pleased to inform relative to the petition made by Don Pedro C. Carrillo if the place he
42 petitions for is vacant, or if it belongs to any individual, corporation, and this being complied with, he will return the espediente to this sub-prefecture for the other purpose.

ARGUELLO,

Senor Sub-Prefect of the Portido of San Diego.

PLAINTIFF'S EXHIBIT 2.

SAN DIEGO, *April 21', 1846.*

The place which citizen Pedro C. Carrillo asks for is at present entirely vacant and does not belong to any ownership, and consequently may be granted to him.

(Signed) JUAN MARIA OSUNA.

MOST EXCELLENT SIR: From the information asked with respect to the place of "La Ysla," or peninsula, which citizen Pedro C. Carrillo , it results that it is entirely vacant, so that it being granted would cause no injury to a third person; wherefore if the Superior Authority thinks proper, it can grant it to the petitioner, as he is without any land of his own and combines in his person the requisites of colonization.

San Diego, April 21', 1846.

(Signed) JOSE R. ARGUELLO.

ANGELES, *May 15', 1846.*

Having seen the petition with which this espediente commences, the necessary reports, with all other things which were represented and deemed proper to be seen in conformity with the law of August 18th, 1824, and regulation of November 21', 1828, I declare
43 Don Pedro Carrillo owner in fee of the land known or named "Isla," or peninsula, in the port of San Diego towards the part of —— of the anchorage. Let the corresponding title be issued and reserve the espediente in order to submit it to the approval of the most excellent departmental assembly.

Pio Pico, constitutional governor of California, thus ordered, decree, and signed, I certify.

(Signed) PIO PICO.

(Sgd.) JOSE MATIAS MORINO,

Secretary.

PLAINTIFF'S EXHIBIT 3.

Pio Pico, constitutional governor of the Department of California. [Seal.]

Whereas Don Pedro Carrillo has, for his own personal benefit and that of his family, petitioned for the land known as the island or peninsula in the port of San Diego, the proper examinations being previously made, using the faculties which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid land in decree of this day, declaring to him the ownership of it by these presents, in conformity with the law of August 18, 1824, and the regulations of Nov. 21′, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as may best suit him.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries will be marked out.

44 3d. The land of which donation is made is two square leagues, and is bounded on the north by the estero of the port of San Diego towards the town, east by the end of the rancho of San Augustin Melisse, south by the sea, and west by the bay or anchorage for ships, as explained by the map which goes with the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance.

In consequence I order that the present title being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the party interested for his security and other purposes.

Given in the city of Los Angeles on this common paper for want of stamped, on the 15th day of May, 1846.

(Signed) PIO PICO.
(Signed) JOSE MATIAS MORINO,
Secretary.

Note has been made of this superior order in the proper book.
(Signed) MORINO.

Note has been made of this superior order on (page) 5 over in the proper book in this subprefecture in my charge.
(Signed) JOSE R. ARGUELLO.

Filed in office April 20th, 1852.
GEO. FISHER, *Sec'y.*

I certify the foregoing to be a correct translation.
(Signed) GEO. FISHER, *Sec.*

Filed in office Sept. 22d, 1852.
(Signed) GEO. FISHER, *Sec.*

45 PLAINTIFF'S EXHIBIT 4.

"*To the honorable commissioners to settle private land claims in California:*

The petitioners, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezer Simmons, respectfully shows:

That on the 15th day of May, A. D. 1846, Pio Pico, governor of California, by virtue of authority in him vested, granted to Pedro C. Carrillo, the island or peninsula of San Diego, situate in the present county of San Diego, containing 2 square leagues, with the boundaries described in the grant, a copy of which is submitted herewith marked A with a translation marked B.

That on the 20th day of October, 1846, the said Pedro C. Carrillo sold and conveyed the said tract of land to the said Bezer Simmons, a copy of which conveyance is submitted herewith marked C with a translation marked D.

That on the 3d day of September, A. D. 1850, the said Bezer Simmons, by deed of assignment, conveyed the said grant of land to the petitioners, a copy of which deed of assignment is submitted herewith marked E.

And the petitioners further show that the said land has not been surveyed by the Surveyor General of the United States, such survey, from the nature of the case being unnecessary, the boundaries being natural, and not to be mistaken.

That since the year 1846 the said Pedro C. Carrillo, Bezer Simmons, and the petitioners have been and the petitioners are now in the quiet, peaceful, and undisputed possession of the said tract of land.

That they know of no conflicting claim.

That they rely for confirmation of title upon the original papers, copies of which are submitted herewith; upon the records
46 and minutes in the archives now under the charge of the Surveyor General; and upon such other and further proofs as they may be advised as necessary.

Wherefore they pray the commissioners to confirm to them the said tract of land.

By their Attys.:

HALLECK, PEACHY & BILLINGS.

Filed in office April 20th, 1852.

GEO. FISHER, *Secy.*

"D."

TRANSLATION OF CONVEYANCE.

In the town of San Diego, Territory of California, on the twentieth day of the month of October, eighteen hundred and forty-six, before me, Citizen Enrique Domingo Fitch, second alcalde of this town and its jurisdiction, and before the witnesses of my assistance,

with whom I act in virtue of my office, besides the witnesses to the instrument, who will at the end be named, appear Don Pedro Carrillo, neighbor and resident of this town, whom I certify I know, and said: That with the knowledge of his wife and in virtue of a contract entered into with the captain of the North American ship "Magnolia," Don Bezer Simmons, citizen of the United States of the North, his residence in the State of Vermont, on the twentieth of the present month and year, who also was present, in which he sold all the land of his ownership in the island or peninsula which is formed by the harbor of San Diego, until it touches the lands of Santiago Emiadio Arguello, which land contains two square leagues, as shown by the title issued by his excellency the governor of the Department, Don Pio Pico, for the sum of one thousand dollars in cash, the only price at which it has been valued, no person having offered
47 him more, and he not finding any person who would give him more, and if it is worth more he cedes and makes donation of it in favor of the said Don Bezer Simmons of his free and spontaneous will, and that of his said wife, so that the contrary can not be maintained by any law or title, for he renounces all that can favor him and binds and comprises himself from this time for himself and in the name of his heirs and successors and of whoever of them may have title, voice, or claim in any manner from this moment he conveys, transfers, and gives in perpetual alienation, with the right of inheritance forever, to the said Don Bezer Simmons and to his heirs, the right of ownership which he has in the said island or peninsula, delivering the corresponding title, dated the fifteenth day of May, one thousand eight hundred and forty-six, which land he declares has not been sold, alienated, or pledged, and that it is free from all tribute, religious or charitable tax, entail, pledge, or other incumbrance, real, perpetual, special, general, tacit, and expressed, and as such he cedes and transfers and from this time forth forever disposes himself and desists from, takes away, and separates from his heirs and successors the dominion, ownership, title, voice, recourse, and every other right which he has in the said land of the peninsula, and cedes, renounces, and transfers them with the actions, real and personal, mixed, direct, and effective in Senor Bezer Simmons, and in whoever may represent his person, that he may possess, exchange, alienate, and dispose of it at his pleasure as of his own property acquired with legal and just title; he confers on him irrevocable power, with free, full, and general administration, and constitutes him attorney in fact in his own cause, that either of his own authority or judicially he may enter upon and possess himself of the said island or peninsula, and take and seize the real tenure and possession of it which by law belongs to him:
48 and that he may not need to take it, he prays that an authenticated copy of this present be given him, by which, without any other act of taking, it will be seen that he has taken and seized it, and it has been transferred to him, and in the meantime he constitutes himself his tenant and temporary possessor in legal form, and he binds himself that said island or peninsula shall be certain, sure, and

effective, and no person shall molest him or bring suit against his ownership, enjoyment, and benefit; neither shall any incumbrance appear against it, and if he should be molested or suit brought or an incumbrance appear, so soon as the grantor or his heirs and successors may be called upon in conformity with law, they will come forward in the defence in all courts and tribunals until they obtain judgment in his favor, and leave the said Don Bezer Simmons and his in free use, quiet, and peaceful possession; and not being able to obtain it, they shall give him another equal in value, and in want of such he will restore its value, the improvements, useful and necessary, which at the time he may have, the greatest value and estimation which with time they may acquire, and all the costs, expenses, and damages which may follow or accrue to him; all which shall be executed upon them in virtue of this writing, and the oath of him who possess it, or of whoever may represent him, to whom he leaves it to fix the amount, and he relieves him from other proof. And for the observance of all the foregoing the grantor binds his person, his property which he now has or may hereafter obtain, and with it submits himself, and renounces the laws in his favor and defence, with the legal exceptions in form, and he confers ample power in the magistrates who of this matter ought to take cognizance that they force and compel him by the "na ejecutiva" to comply with it, as a definitive sentence passed in authority of res judicata, consented to,
49 and without other recourse, and as such he secures it. And they signed it, with me and those of my assistance, the witnesses to the instrument being citizens Miguel de Pedrosena, Jose F. Snook, Thomas Russell.

(Signed) H. D. FITCH,
(Signed) PEDRO C. CARRILLO.

Asstv. witnesses:
(Signed) SANTIAGO E. ARGUELLO.
(Sgd.) ALFD. ANSELIN.

Witnesses to the Instrument.
(Signed) MIGUEL D. PEDROSENA.
(Sgd.) JOSE F. SNOOK.
(Sgd.) THOMAS RUSSELL.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

"E."

DEED OF ASSIGNMENT.

This indenture, made this third day of September, A. D. one thousand eight hundred and fifty, between Bezer Simmons, of San Francisco, in the State of California, party of the first part, and Frederick Billings, James R. Bolton, and H. W. Halleck, of said city, parties of the second part—

Witnesseth, that the said party of the first part, in consideration of the sum of one dollar to him in hand paid by the said parties of

the second part, the receipt whereof is hereby acknowledged, and for the further consideration hereinafter specified, hath given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell unto them, the said parties of the second part, all those lands, tenements, and hereditaments lying and being in the State of California, which are more particularly specified and described in a schedule hereto annexed and made a part hereof, marked Schedule A. To have and to hold unto them the said parties
50 of the second part, their heirs and assigns forever, in trust nevertheless and to and for the following uses, intents, and purposes, that is to say, that the parties of the second part shall take possession of all and singular the said lands, tenements, and hereditaments hereby conveyed or intended so to be, and sell and dispose of the same either at public or private sale, to such person or persons, for such prices and on such terms and conditions, and either for cash or upon credit, as in his judgment may appear best and most for the interest of the parties concerned, and convert the same into money, and thereupon to execute, acknowledge and deliver good and sufficient deeds, and all instruments of conveyance necessary to effect a sale and transfer of any and all the estates and property hereby conveyed or intended so to be, and by and with the proceeds of such sales, the said parties of the second part shall first pay and disburse all the just, reasonable, and usual expenses, costs, charges, and commissions of making, executing, and carrying into full effect this assignment and the objects thereof, and the residue of the proceeds of such sales shall be considered as the nett avails or proceeds of the property hereby conveyed.

And first, by and with the said nett proceeds, the said parties of the second part shall pay and discharge in full all the debts, obligations, and demands, due or to become due by the party of the first part or in anywise existing against him, together with all interest that may be due thereon at the time of payment.

And, secondly, by and with the rest, residue, and remainder of said nett proceeds, if any shall remain after the payment in full of said debts and private liabilities of the party of the first part, the said party of the second part shall pay and discharge the partner-
51 ship debts mentioned in the deed of assignment this day made by the said Bezer Simmons and William H. Aspinwall to the said parties of the second part, and hereby referred to, according to the order and arrangement established by the said deed for the payment of the debts therein mentioned or referred to. And the said party of the first part also assigns and conveys to the said parties of the second part all the goods, chattels, vessels, boats, and personal property of every kind mentioned in the said Schedule A, hereto annexed, in trust for the uses and purposes herein set forth as those to which the proceeds of the real estate above conveyed are to be devoted.

In testimony whereof the party of the first part doth hereunto set his hand and affixed his seal on the day and year first herein written.

(Sgd.) B. SIMMONS.

Signed, sealed, and delivered in the presence of—

(Sgd.) ARCH. D. PEACHY.
(Sgd.) C. TEMPLE EMMET.

STATE OF CALIFORNIA,
County of San Francisco:

At San Francisco, on this third day of September, A. D. eighteen hundred and fifty, personally appeared before me, a notary public in and for said county, Bezer Simmons, well known to me to be the party described in, and who executed the same freely and voluntarily and for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal official the day and year above written.

[SEAL.] (Signed) C. TEMPLE EMMET,
Notary Public.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

32 PLAINTIFF'S EXHIBIT 5.

No. 188.

Opinion by Comr. S. B. Farwell.

FREDERICK BILLINGS ET AL. vs. THE UNITED STATES. } Claim for the island or peninsula at Santiago, in the county of Santiago.

In this case the claimants have offered in evidence traced copies of the espediente and grant to Don Pedro Carrillo.

The grant was issued by Pio Pico, governor, and is dated the 12th day of May, 1846.

The claimants have also offered in evidence a deed of conveyance from the said Carrillo and his wife of the premises to Don Bezer Simmons, dated the 20th day of October, 1846.

Also a deed of assignment from the said Simmons to the said Billings and others, the present claimants, bearing date the 2d day of Sept., 1850.

The genuineness of all said documents is satisfactorily established by the proofs in the case.

The grant contains the usual conditions, and it now remains to be seen whether these conditions have been complied with. There is no evidence whatever that the original grantee has ever done anything whatever in the line of improvements or that he or any other person ever inhabited the same up to the day of his sale to said Simmons. But it does appear from the documentary evidence that he sold the

same before he performed any of the conditions of inhabitancy or cultivations in violation of the terms and conditions of the grant. Thomas D. Johns is the only witness in the case produced on the part of the claimants to prove the performance of the conditions of the grant. He testifies that he is acquainted with the premises in question and that he knows that three houses were erected
53 sometime in the summer or fall of 1850, and that they were erected by the agent of William Aspinwall in order to keep possession of the island and keep off squatters.

It is the opinion of the board that the conditions of the grant and the law under which the same was issued have not been complied with and that the claim is invalid and that the same should be rejected, and a decree will be entered accordingly.

Rejected.

Filed in office Oct. 31, 1854.

GEO. FISHER, *Sec'y.*

PLAINTIFF'S EXHIBIT 6.

In the District Court of the United States within and for the Southern District of California.

Hon. Isaac S. K. Ogier, judge. December term, 1856.

THE UNITED STATES, appellee,
vs.
FREDERICK BILLINGS, & OTHERS, appellants. } No. 257.

Transcript from the board of land commissioners, No. 188.

This cause coming on to be heard on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon the transcript of the proceedings and decision of said board and the papers and evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is

Ordered, adjudged, and decreed that the decision of said
54 board of land commissioners, rejecting the claim of the appellants Frederick Billings and others, be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed that the title of the appellants, Frederick Billings and others, to the lands claimed by them, as set forth and described in their petition to the said board of commissioners and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the "Island or peninsula of San Diego," is situated in the county of San Diego, and

is bounded on the north by the estero of the port of San Diego towards the town, east by the end of the ranch of Augustin Melijo, south by the sea, and west by the anchorage for ships, according to the documents of title and map to which reference is had; if the quantities within said boundaries is less than two square leagues, then the confirmation hereby made is for the whole tract, but if the quantity within said boundaries exceeds two square leagues, then the confirmation hereby made is for two square leagues and no more.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the So. Dist. of Cal.

(Endorsed:) Filed Jany. 12, 1857, C. Sims, clerk.

55 Pursuant to stipulations of the parties entered into in open court, there was admitted in evidence the order made by the United States District Court for the District of California on May 7, 1867, which said order is in words and figures as follows, to wit:

At a stated term of the United States District Court, held at San Francisco on the 7th day of May, A. D. 1867.

Present: Hon. Ogden Hoffman, judge.

FREDERICK BILLINGS ET AL., assigness of Bezar Simmons, dec'd., claimants and appellants, *vs.* THE UNITED STATES, appellees.	No. Isla de San Diego.

Now, at this day, on motion of counsel for claimants and filing deeds of conveyance in support thereof showing title to the premises known as the island or peninsula of San Diego claimed by and confirmed to the aforesaid claimants and appellees to be in Archibald C. Peachy and William H. Aspinwall, the said Peachy being the owner of the one undivided moiety and the said Aspinwall of the other undivided moiety.

Now, therefore, it is hereby ordered that the said Archibald C. Peachy and William H. Aspinwall be, and they are hereby, substituted in the place and lieu of Frederick Billings et al., assignees of Bezar Simmons herein, and that this cause be, and the same is, revived in the names of said Archibald C. Peachy and William H. Aspinwall as claimants and confirmees herein, and that all further proceedings had herein be in their names.

OGDEN HOFFMAN, *Dist. Judge.*
GEO. C. GORHAM, *Clk.*
By JOHN O. WHEELER, *Dep.*

(Endorsed:) Filed May 7, 1867.

56 Pursuant to stipulation between the parties, there was then admitted in evidence the following:

In the District Court of the United States for the Southern District of California.

Hon. Isaac S. K. Ogier, judge.

FREDERICK BILLINGS ET AL., ASSIGNEES OF BEZAR SIMMONS, appellants,
vs.
THE UNITED STATES, APPELLEE.
No. 257.
Transcript No. 188.

The answer of Pacificus Ord, attorney of the United States for the Southern District of California, for and in behalf of the United States, to the petition of Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons and of Orrin Simmons, Henry Simmons, Nathan R. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholomew, heirs at law of Bezar Simmons, deceased, for a rehearing of this case; and that the decision of the commissioners appointed under the act of Congress of 3rd March, 1851, to examine claims to land in California, be reversed and annulled, and their claim to the island or peninsula of the port of San Diego be confirmed, says: That he denies all and singular each and every allegation in said petition contained. And further, this respondent denies generally the validity of the alleged title of the claimants to the said land claimed by them. And further, this respondent denies that the said Billings, Bolton & Halleck are the assignees of said alleged heirs at law of said Simmons, deceased.

And the said respondent prays that this honorable court will affirm the decision of said commissioners in said case; and decree the said alleged title for said land to be invalid, and for general relief.

P. ORD,
Attorney of the United States
for the Southern District of California.

(Endorsed:) Filed Jan'y 14th, 1856. C. E. CARR, Clk.

57 It was stipulated by and between the parties plaintiff and defendant:

(1) That the premises described in the complaint herein, to wit, North Island, in the harbor of San Diego, in the county of San Diego, California, are included within and are a part of the land described in that certain decree of confirmation rendered by the United States District Court for the Southern District of the State of California, at the December term thereof, in the year 1856, in a proceeding therein pending entitled Frederick Billings et al., assignees of Bezar Simmons, vs. The United States, numbered 257 on the docket of said court; and that the said premises are included within and are a part of the land described in that certain patent dated June 11, 1869, and issued by the United States of America to Archibald C.

Peachy and William H. Aspinwall, which said patent is described and referred to in the third and fourth defenses interposed by the defendant herein to the complaint of the plaintiff.

(2) That the defendant, Coronado Beach Company, has succeeded to and, with the exception of two small tracts aggregating 57.41 acres, more or less, heretofore conveyed by the defendant to the plaintiff, is now the owner of all and singular the right, title, and interest of the confirmees named and described in the said decree of confirmation in said proceeding number 257 in and to North Island aforesaid, and has succeeded to and is now, with said exception, the owner of all the right, title, and interest of the said patentees, Archibald C. Peachy and William H. Aspinwall, in and to said North Island.

(3) That the defendant, Coronado Beach Company, has paid all taxes levied or assessed upon the premises described in the complaint herein since the issuance of the said patent dated June 11, 1869.

58 PLAINTIFF'S EXHIBIT 7.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Frederick Billings, James R. Bolton, and Henry W. Halleck, as claimants, filed their petition on the 20th day of April, 1852, with the commissioners to ascertain and settle the private land claims in the "State of California, sitting as a board in the city of San Francisco," in which petition they claimed the confirmation of their claim to the tract of land called the island or peninsula of San Diego, containing two square leagues, more or less, in the county of San Diego and State aforesaid, said claim being founded on a Mexican grant to "Pedro Carillo," made on the 15th day of May, 1846, by Pio Pico, then constitutional governor of the "Department of California;" and

Whereas the board of land commissioners aforesaid by a decree rendered October 31st, 1854, rejected said claim, which decree or decision was on appeal reversed by the District Court of the United States for the Southern District of California at its December term, 1856, in the cause entitled "The United States, appellees, *Ads.* Frederick Billings & other appellants," the decision of said court being as follows: "It is 'Ordered, adjudged, and decreed that the decision of said board of land commissioners rejecting the claims of the appellants, Frederick Billings & others, be, and the same is hereby, reversed.

"'And it is further ordered, adjudged, and decreed, that the
59 title of the appellants, Frederick Billings and others, to the

land claimed by them, as set forth and described in their petition to the said board of commissioners and the documentary and other evidence in this case, is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

"The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the island or peninsula of San Diego, is situated in the county of San Diego, and is bounded on the north by the estero of the port of San Diego, towards the town, east by the land of San Augustin Melijo, south by the sea, and west by the anchorage for ships according to the documents of title and maps to which reference is had.

"If the quantity within said boundaries is less than two square leagues, then the confirmation hereby made is for the whole tract, but if the quantity within said boundaries exceed two square leagues, then the confirmation hereby made is made for two square leagues and no more, and appeal having been taken from said decree to the Supreme Court of the United States, said appeal was dismissed at the December term, 1863, of said Supreme Court as appears from a duly authenticated transcript on file in the General Land Office whereupon the aforesaid District Court by a decree filed May 7, 1867, ordered that said claimants be and they are hereby allowed to proceed under said decree of confirmation as under a final decree.

"And whereas it further appears from a duly authenticated transcript on file in the General Land Office that at a stated term of the United States District Court held at San Francisco, on the seventh day of May, 1867, A. D., a decree was rendered in this case, substituting Archibald C. Peachy and William H. Aspinwall in place
60 and lieu of Frederick Billings et als., and ordering that this cause be and the same is reversed in the name of said Archibald C. Peachy and William H. Aspinwall as claimants and confirmees herein and that all further proceedings had herein be in their names.

And whereas, under the 13th section of said act of 3d March, 1851, and the supplemental legislation there has been deposited in the General Land Office a return with a plat of the survey of the said claim confirmed as aforesaid authenticated by the signature of the United States Surveyor General of the State of California, whereby it appears that said claim has been designated as lot numbered forty in township seventeen south of range three west, and lot numbered thirty-eight in township eighteen south of range two west of the San Bernardino meridian, containing four thousand one hundred and eighty-five acres and forty-six hundredths of an acre, situated in the State of California, the plat in the aforesaid return of survey being in the words and figures as follows, to wit:

61 Now know ye that the United States of America in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, and the legislation supplemental thereto, have given and granted and by these presents do give and grant unto the said Archibald C. Peachy and William H. Aspinwall, and their heirs, the tract of land embraced and described

in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the confirmation of the said claim and this "patent" shall not affect the interest of third persons.

To have and to hold the said tract with the appurtenances unto the said Archibald C. Peachy and William H. Aspinwall and to their heirs and assigns forever with the stipulation aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this eleventh day of June, in the year of our Lord one thousand and eight hundred and sixty-nine and of the independence of the United States the ninety-third.

U. S. GRANT.

By the President:
By L. N. BURRITT,
"*Secretary.*"

MARTIN BUELL,
Acting Recorder of the General Land Office.

"Admiterim."

Recorded vol. 7, pages 246 to 249, inclusive.

Received for record July 6th, A. D. 1869, at one o'clock and 30 min. p. m., and recorded July 26th, 1869, at 3 hr. p. m., at the request of E. W. Morse.

G. A. PENDLETON, *County Recorder.*
By ED. HEUCK, *Deputy.*

62 PLAINTIFF'S EXHIBIT 8.

In the District Court of the United States for the Southern District of California.

FREDERICK BILLINGS ET AL., ASSIGNEES OF BEZER SIMMONS,
vs.
THE UNITED STATES. } No. 257.

Appeal by claimant.

To the honorable the judge of the United States District Court for the Southern District of California:

The petition of Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezer Simmons, and of Orrin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin E. Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholomew, heirs at law of Bezer Simmons, deceased, respectfully represents that under the provisions of the act of Congress of the 3d of March, 1851, a petition was presented to the commissioners appointed under said act

to examine claims to land in California, praying for the confirmation of the said claim of petitioner to the tract of land known as the island or peninsula of the port of San Diego; that said petition was accompanied by evidence of the title of said Bezer Simmons and the other petitioners, to which for more particular information petitioners beg leave to refer; that the said claim was designated as number 188 on the docket of said commissioners, and was rejected by them on the 31st of October, 1854; that the said land is situated in the Southern Judicial District of California; that a transcript of the decision and proceedings of the commissioners was filed in the office of the clerk of the court for that district on the 2nd day
63 of July, 1855; and that a notice of appeal on behalf of the claimants was filed with said clerk on the said 2nd day of July, 1855.

Your petitioners pray for a rehearing of the case upon this appeal; that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to confirm said claim to the premises mentioned and referred to in their said petition and evidence of claim. And your petitioners will ever pray, &c., &c.

HALLECK, PEACHY & BILLINGS
and
STANLEY & KING,
Attys. for Petitioners.

LOS ANGELES, *Sept. 22nd, 1855.*

(Endorsed:) Filed Sept. 22, 1855. C. E. Carr, clerk, by John W. Rose, dep.

PLAINTIFF'S EXHIBIT 9.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the District Court of the United States for the
[SEAL.] *Southern District of California, greeting:*

Whereas lately in the District Court of the United States for the Southern District of California, before you, in a cause between Frederick Billings, James R. Bolton, & Henry W. Halleck, assignees of Bezer Simmons et al., appellants, and the United States appellees (No. 257, for "Island or Peninsula of San Diego"), wherein the decree was rendered in favor of the said appellants, as to the
64 inspection of the transcript of the record of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears, and whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and on the motion of Mr. Attorney General Bates, of

counsel for the appellants, it is now here ordered, adjudged, and decreed by this court that this cause be, and the same is hereby, dismissed, 12 Feb.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty-three.

Taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

Cost of ———.

Check $———.

Attorney $———.

(Endorsed:) Filed May 7, 1867. Geo. C. Gorham, clerk, by John O. Wheeler, deputy.

65 The defendant offered in evidence the decree of this court establishing the title in the defendant, to which the plaintiff objected, and upon the objection being overruled an exception was reserved on behalf of the plaintiff. The said decree was thereupon admitted in evidence as defendant's Exhibit A, and reads as follows:

In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* CORONADO BEACH COMPANY, A CORPORATION, DEFENDANT.	No. E–34. In Equity.

Decree.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the plaintiff, United States of America, has no easement, estate, interest, right, title, claim or demand of any kind, character, or description in or to the land mentioned and described in the bill of complaint herein, and more particularly described, designated, and set out in the said bill of complaint as the whole of North Island in the harbor of San Diego, in the county of San Diego and State of California, or in or to any part or parcel thereof, for use for the defense or security of the Nation, or for any purpose whatsoever, or at all, except that as to those certain pieces or parcels of land within the exterior limits of the said North Island which are described in that certain deed from Coronado Beach Company, a corporation, to the United States of America, recorded September 12, 1901, in book No. 312 of deeds, at page 185 et sequitur, of the records of said county of San Diego, California, containing thirty-eight and fifty-six

66 hundredths (38.56) acres, more or less, and in that certain deed

from Coronado Beach Company, a corporation, to the United States of America, recorded in book No. 211 of deeds, at page 381 et sequitur, of the records of said county of San Diego, California, containing eighteen and eighty-five hundredths (18.85) acres, more or less, the United States of America is the owner in fee simple of said certain pieces or parcels;

That the claimant and defendant herein, Coronado Beach Company, a corporation, was, at the time of the commencement of this suit, ever since has been and now is the sole and exclusive owner in fee simple absolute of all and singular the land mention, designated, and described in the bill of complaint herein and more particularly described, designated, and set out in the said bill of complaint as the whole of North Island in the harbor of San Diego, in the county of San Diego, and State of California, free and clear of any easement, estate, interest, right, title, claim, or demand of any kind, character, or description of plaintiff, the United States of America, in or to the same, or in or to any part or parcel thereof, for use for the defense or security of the Nation, or for any purpose whatsoever, or at all, except as to the aforesaid certain pieces or parcels hereinabove in this decree specified and of which the United States of America is the owner in fee simple;

That the title of claimant and defendant, Coronado Beach Company, a corporation, in and to the land in the said bill of complaint described, and in and to every part and parcel thereof, except as to the aforesaid certain pieces or parcels of land hereinabove in this decree specified, be and the same hereby is quieted and established against any and all claims and demands whatsoever of plaintiffs, the United States of America.

Done at Los Angeles, this 15th day of March, 1920.

OSCAR A. TRIPPET,
Judge.

67 Plaintiff's Exhibit 10 (for identification), map marked "North Island, site No. 1," and being a part of report No. 3 of the commission on navy yards and naval stations; and attached to Document 1946, part 3, Sixty-fourth Congress, second session, House of Representatives.

68 APRIL 16, 1920.

The COURT. I will limit this argument to an hour and a quarter on a side. Proceed.

Mr. DUNNE. (Proceeds with argument upon the question of the boundaries and area of North Island.)

Mr. DENIS. (Replies to argument of Mr. Dunne.)

The COURT. What do you claim, then, is your right beyond high-water mark, out to this survey, the edge of the anchorage—what is your claim?

Mr. DUNNE. Our claim is that we have the right to build wharves and other structures in utilization of our tide lands.

The COURT. Without a franchise?

Mr. DUNNE. Absolutely. We are the private owners.

* * * * * * *

Mr. DENIS. The point I make is that Congress intended to take that land and no submerged lands whatever.

The COURT. I am inclined to think, Colonel Denis, that you ought to amend your complaint and say so.

Mr. DENIS. I am perfectly willing to amend the complaint, your Honor, but I would rather have some short time after the court has held that the point made by the Government—that the lands included in the patent below the line of high-water mark—is not well taken.

Mr. DUNNE. The difficulty about amending the complaint is that such proceeding is controlled by the statute, and the statute says "the whole of North Island."

The COURT. Colonel Denis says—he is representing the Government here, and he does not claim anything except what is in red on this map. I can not make him claim anything more.

Mr. DUNNE. But the Government, if your Honor pleases, is controlled by the act of Congress. The authority for this
69 condemnation proceeding comes from the act of Congress. And what the Congress directs is the appraisement of the value of the whole of North Island, and that is the only thing this court can try. It can not shrink the issue by an amendment of the pleadings, and the Government has no power to shrink the scope of that statute by an amendment in these proceedings.

The COURT. It seems to me if your patent conveys you that land, you can do with it what you please, unless you can show me some authority to the contrary. This right that you claim, if it affected the tidal prism, if it is subordinate to the grant and has been so decided, I would like to have the authorities on it.

Mr. Dunne's argument here that his patent carries the title to this land out to this survey, has impressed the court very forcibly, and I would like to have a proceeding here that would be final. At one time I suggested, concerning the other question involvel, that we have two verdicts in the case. Couldn't we here in this case take the opinion of the jury concerning the value of this land outside of the bulkheads, and then the question could be submitted to the Supreme Court concerning the ambiguity of the statute. I think there is an ambiguity if I am right.

Mr. DENIS. If your Honor please, I expect to ask the court
70 to instruct the jury to find three verdicts: One, the value of the land claimed by the defendant, 2,147 acres; another, the value of the land within the high water, 1,297 acres, less a small body of land belonging to the Government; third, the value of the lands outside of the uplands, in other words, the tide and submerged lands. Your Honor made that suggestion months ago and neither side could see its way clear, but as the case has shaped itself, the Government expects to ask you to instruct the jury to find those three verdicts.

The COURT. The burden of deciding what is North Island will be greatly lessened on this court if we can get a verdict specifying the damages separately as to those items; and I apprehend that when such a verdict goes to the Supreme Court, that they could arrive at a correct judgment and end the case.

APRIL 16, 1920—*2 o'clock p. m.*

(Further argument by Mr. Dunne.)

Mr. DENIS. If your Honor will permit me, I would like at this time to offer the map from the report of the House Military Affairs Committee, which you have in your hand, as an exhibit in this case (referring to Exhibit 10).

Mr. DUNNE. To which we object as immaterial, irrelevant, and incompetent for any purpose in this case, and not binding upon the defendant in the action.

Mr. DENIS. Is it on the ground that it is not an official document?

Mr. DUNNE. No, sir; upon the ground that it is an ex parte self-serving paper; and upon the further ground that it contains no data by metes and bounds or other specifications delimiting the boundaries of the property in question. Upon both grounds I object to it as incompetent.

71 Mr. DENIS. I will add to my offer the statement that the map in question and now offered, is a part of an official record, to wit, a report of a committee of Congress—65th Congress, first session—and as a part of that report, it is contended by the Government that it assists in determining what is meant by the language "the whole of North Island."

Mr. DUNNE. And we object to that upon the grounds that we are not bound by any alleged committee of Congress; that this statute is interpretable upon the terms upon the face of it.

The COURT. Well, the meaning of that law—the act of Congress and the whole of North Island, I take it, is a question of law, and the interpretation of that question is for the court. And in considering that question, if there is an ambiguity, I take it that the court may refer to the reports of the committee of Congress, or the maps used by Congress; but my opinion is that the jury has got nothing to do with the interpretation of that law, and therefore this map would be irrelevant. I will sustain the objection. Do you want to mark it?

Mr. DENIS. I would ask that it be marked for identification, if your honor please.

The CLERK. It will be plaintiff's Exhibit 10 for identification.

Mr. DENIS. And I would ask the court to permit me to reserve an exception.

The COURT. Certainly.

72 Whereupon and thereafter, to wit, on April 17th, 1920, by stipulation of counsel, the jury, accompanied by the judge, counsel for the parties, and the official stenographic reporter, proceeded to and did view North Island in San Diego Bay.

APRIL 19, 1920—10 a. m.

The COURT. Are you gentlemen going to read this stipulation to the jury—the documents that were to be considered in evidence?

Mr. DUNNE. I will read the proceedings, your honor.

(The stipulation of counsel, and the documents introduced in evidence by the plaintiff in the absence of the jury, read by Mr. Dunne.)

The COURT. Call your witness.

73 HOWARD C. HOLMES, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

My business or occupation is that of civil engineer. I have been engaged in the practice of my profession for over thirty years. I have practiced it principally in California. I was at one time assistant engineer of the board of State highway commissioners of California for a period of about eight years, from 1875 to 1883; subsequent to that, from 1893 to 1901, I was chief engineer. I was chief engineer of the South Pacific Coast Railroad—that is, relative to water-front matters; consulting engineer for the Western Pacific on water terminal; the Santa Fe; California & Northwestern; the North Pacific Coast; the Key Route—an Oakland line—a line running from San Francisco to Oakland, and known as the San Francisco, Oakland & San Jose Railway; and also the old South Pacific Coast, which is now known as the Alameda Mole, a branch of the Southern Pacific; the Richmond Belt Railroad, which is a water-front affair. I was chief engineer for the San Francisco Dry Dock Company; consulting engineer for the Bethlehem Shipbuilding Company; the Moore Shipbuilding Company, and the Union Iron Works. The Union Works is a branch of the Bethlehem Steel Company. I designed most of the piers on San Francisco Bay during my official career. I designed, as I say, the Alameda Mole; both dry docks at Hunters Point—graving docks; two floating docks for the Bethlehem Steel Company; one for the Moore Shipbuilding Company; and one at Valparaiso, Chili, for the company of Des Diques; and also a dry dock at Esquimault, British Columbia; also the foundation for the Ferry Building, at the foot of Market Street.

74 I am familiar with the property in question here—North Island, in San Diego Bay. I have known that property, I guess, for the past four or five years. I have been on the island and am familiar with its location and area generally. I know the tide-land front of the island, the northwestern front—the tide-land area.

Mr. DUNNE. Q. Now I will ask you, Mr. Holmes, for what purposes, if any, in your judgment, commercially speaking, those tide-lands are adaptable and were adaptable on the first of August, 1917?

Mr. DENIS. To which the Government objects on the ground that it is incompetent, immaterial, and irrelevant, principally in that the proceeding here is for the condemnation of North Island, and the whole of North Island, which consists of the land above the line of high-water mark in San Diego Bay. There is but one word I wish

to add to what was said on Friday, and that is to call your honor's attention to the map accompanying the patent issued by the Government upon the confirmation of this grant. That wholly fails to show North Island eo nomine, by name, whereas the map which was offered to your honor and was marked for identification shows the land that is sought to be condemned under the act of Congress.

The COURT. Is that patent map here? As I understand, the map that is attached to the patent does not name the island North Island.

Mr. DENIS. Instead of that blue print I would like the original patent map to be shown to the court [map exhibited to the court]. The map that Mr. Dilworth is offering your honor is the map attached to the original patent.

The COURT. Well, on this map it is called high land. There is no such word as North Island on it. The law authorizing this
75 proceeding to be brought designates "the whole of North Island." Now, as I understand, the Government claims that the whole of North Island is simply the high land, while the defendant claims that the whole of North Island embraces the survey to the westward of the high land, out to the edge of the anchorage. Now, I am inclined to think, gentlemen, that the jury should be asked to put an appraisement on what is known as high land, separated from this, out to the edge of anchorage, from the line of high-water mark as shown on the patent, out to the edge of the anchorage, and let them state the value of the land, what is called the submerged land—the subaqueous land. And I would like to reserve my ruling on this question until the close of the case. That is agreeable to counsel?

Mr. DUNNE. Yes, sir.

Mr. DENIS. Yes, sir.

Mr. DUNNE. But we will proceed with the introduction of the testimony.

The COURT. Yes, sir; and I will reserve my ruling. It has occurred to me that if the Government should simply claim in this proceeding the high lands and divest itself of any claim of this subaqueous land, that then the defendant would have a right to file a cross complaint to have that assessed under this law.

Mr. DUNNE. A severance damage.

The COURT. Yes, sir; and so far as I am concerned, if we can get a special verdict, it seems to me if we could get a special verdict as to the value of the lands, the uplands, and the value of this subaqueous land, and all of it together—say, three verdicts—that the pleadings need not be changed, and the judgment of the court will be for such damage as the court thinks proper. I will reserve my ruling on the objection made.

Mr. DENIS. That is agreeable to the Government, and this
76 testimony that is about to be offered will not be interrupted by constant objections from the Government.

The COURT. No need. I think you have saved your point now, and there is no need of any further objection.

Mr. DUNNE. Now, will you read the question, Mr. Reporter [question read]?

The WITNESS. They were adaptable for the construction of wharves, slips, piers, and various things I have described—dry docks, shipbuilding plants, landings for freight, to bring the ship and car together—anything that pertains to water front. I have prepared a map, or a plan, explaining the adaptability of that land to the commercial purposes that I have indicated. I have prepared a map showing North Island and the submerged lands, which will present the general situation to the jury (a map was hung on the blackboard).

Mr. DUNNE. I want to say that the data on this map are based upon the United States engineer's map.

The WITNESS. The ocean is shown below this shaded blue line; this is the ocean [indicating]. The ocean lies to the south of Coronado and North Island, this being north, the top of the map north. This indicated the Government breakwater, and north of the island is the Bay of San Diego, or a portion of it. This indicates what is known as Spanish Bight, and this is Whalers Bight [indicating]. This dark line around North Island is the line of ordinary high water, and also the upland, the line of the upland. The colored portion indicates the upland on North Island. The red shaded line indicates the line of submerged land, the boundaries of the island, the patent [indicating]. That red line I have just indicated with my pointer is the survey line taken from the patent that was just handed to his honor. I am following now with my
77 pointer the dotted line which is just outside of the survey line. That is the pierhead line established by the United States Government; that is the line to which it is allowable to build open structures. The other inside line, just outside of the heavy line, is the bulkhead line. That is the line beyond which no solid structures are allowed to be built [indicating]. You will notice the pierhead line crosses the grant line at this point [indicating]. In other words, the grant line extends beyond the pierhead line. The acreage in that little triangle formed where the grant lies overlaps the pierhead line is about 4.7.

The COURT. That is to say, the pierhead line crosses inside of the patent line, and there is about 4.7 acres outside the pierhead line.

The WITNESS. The beach land between this bulkhead line and the heavy line, or the line of ordinary high water mark, averages about 250 feet in width; it runs from approximately 250 to 300 feet in width. I couldn't say what the acreage is. The acreage of the tide lands I have designated here is 663.3. The exact figures on this map for the acreage of the uplands are 1,495.3; that includes the Government reservation of 57.43 acres. That leaves net about 1,438 acres. I am familiar with this map which you hand me, with the segregations of acreage thereon. The land that will be strictly upland will be 1,232.93 acres. The marsh land of Whalers Bight will be 66.09. The Whalers Bight spit will be 11.42. The south ocean

front, that is, the portion that comes below here, that has been eroded by the ocean, is made up of two portions, one on the island proper of 32.52, and one opposite the bar or spit there of 39.1 acres. And then there is a piece of meadow land, 15.05. That is at Spanish
78 Bight. That is about all the upland. That 15 acres was not erosion. The erosion is here [indicating].

Mr. DUNNE. I will ask that this map go in evidence, and this will be our Exhibit 1.

The CLERK. It will be defendant's Exhibit B, Mr. Dunne.

Mr. DUNNE. Very well, I will ask the jury to look at this map, so that they can see the areas over and above the 1,232 acres of the high land.

Mr. DENIS. If your honor please, the Government will not object to the map, so far as it indicates the upland, but it will be subject to our objection.

Mr. DUNNE. It will be subject to your objection. The objection will pursue the examination.

(The map marked "Defendant's Exhibit B" was exhibited to the jury.)

Mr. DUNNE. I will offer that map in evidence as defendant's Exhibit C.

The CLERK. Defendant's Exhibit C.

The WITNESS. I have prepared two maps or diagrams, one on this scale and one on a little larger scale, illustrating the commercial adaptability of these tide lands, as I understand such adaptabilities to exist (map is placed in position on the board).

Mr. DENIS. Before that map is exhibited, the Government wishes to object to it, your honor, on the ground that it is incompetent, immaterial, and irrelevant.

The COURT. I understand it is only offered for the purpose of illustrating the testimony of the witness.

Mr. DUNNE. Yes, sir; for no other purpose.

Mr. DENIS. That is the basis of the objection—the testimony of the witness to show by map or other illustration the subdivision of
79 the property is irrelevant, incompetent, and immaterial, and includes the objectionable evidence of speculative value. I will concede, of course, that the witness for the defendant may testify to the highest price for which the property is adaptable, but I must contest the proposition that in showing that highest price they are permitted to show the number of residential lots into which that property may be subdivided. They can testify that it is subject to subdivision, but not to the subdivision of the property into lots, especially if it be followed by testimony as to what those lots may be worth after subdivision.

The COURT. Well, I think the latter statement is true—that they would not be permitted to testify to what separate lots are worth.

Mr. DUNNE. Oh, no. This is a strictly limited offer, for the purpose of illustrating the testimony of the witness.

The COURT. Well, as a part of the witness's testimony, it may be exhibited to the jury. It is understood, of course, that the speculative value can not be put upon this land.

Mr. DENIS. The Government excepts. Your honor, can it be stipulated——

Mr. DUNNE. Yes, indeed, Colonel.

The COURT. Rulings will be excepted to.

Mr. DENIS. That the rulings will be excepted to.

The COURT. All right.

Mr. DENIS. I don't know that it is strictly regular, but I thought it would save time.

The COURT. I think the provisions of the Code of Civil Procedure of California apply here, and you might stipulate it.

Mr. DUNNE. Yes, sir; and I will join with Col. Denis.

Mr. DENIS. Well, I think myself it is advisable to save the time of the court.

The WITNESS. The line along here following down here is
80 just within the grant line—the United States patent line. This portion open, showing an open portion, is where the grant line overlaps the Government pierhead line. Along here, at the back of the pier, as shown on here, represents the Government's bulkhead line. This shaded portion along here represents what is known ordinarily as an apron wharf, that is, a wharf that overlaps and protects a seawall. That horizontal wharf, as you call it, in contradistinction from the municipal pier, is what is designated as an apron wharf—an apron or bulkhead wharf. And it is best illustrated in this cross section here. You see the apron wharf extends to here. For instance, you might say this is the line of the municipal pier, and that would be their apron wharf. For instance, this was what would be called the water front street, from the bow of this vessel into the building, as indicated here. The pier extending into the water and away from the embankment would be what would be known as an apron wharf. In other words it is a half wharf, half on the shore and half in the water. This thoroughfare along here would consist of an apron wharf, say 60 feet in width, and the balance of the fill, some 140 feet in width. That thoroughfare runs just inside of the bluff—or just outside of the buss of the upland on North Island—seaward. The bluff there is 8 to 12 feet in height. If you stood upon the brink of that bluff you would be looking down on this stretch of beach land that you speak of, from 150 to 350 feet wide. The apron wharf would be established upon that beach, but of course, the beach would be raised. In other words the proper height for a wharf of that character would be probably from four to six feet above ordinary high water. That inner basin could be made adaptable for shipping by dredging. The depth of water, now, taken from low water, out to the anchorage or shipping chan-
81 nel averages about five feet. The embarcadero, or strip below the bluff where the apron wharf would be established, would be filled with the spoils from the dredger, from dredging this basin, to a depth of thirty feet. That fill would rise along the embarcadero

for an extent of from five to six feet above high water, but you could also fill this marsh. It is the intention, in this plan, to fill the marsh and what is known as Whalers Bight, to approximately the height of the adjacent mesa. This thoroughfare or embarcadero, would consist of a street, say, from 150 to 200 feet in width, about five or six feet above high water. On that could be placed railroad tracts, and from that projecting at the different angles, would be these various piers. They would be approximately a thousand feet long and two hundred feet in width. Up at the upper end could be located the ship building plant, with a floating dry-dock, as shown in this section here; a floating dry dock with a capacity of, say, 10,000 tons dead lift. Next to that could be located a fuel oil plant with its tanks on the upper land, and its wharf and railroad tracks in front and at the rear. Next to that could be located a vegetable oil plant. There is quite a demand for cocoanut oil at the present time. There are several plants in San Francisco and around the bay. That could be located with its tanks and its warehouses and its tracks both front and rear, and the tracks also running down the wharf. Next to that could be located a wharf for oriental shipping, one for European shipping, and these wharves down here could be used for general merchandise. Along here could be located wharves and tracks for the purposes of handling building materials. Along here another wharf for the purpose of handling lumber, that is, bring it in in the form of a raft and sawing it up; also timber preserving works. All kinds of commodities could
82 be handled here, the same as in a seaport. That property is adaptable for a railroad terminal. A terminal as was sketched out at the right hand corner; a railroad terminal having railroad connections by means of car ferry, and by means of a railroad across the bridge here. Say the San Diego and Arizona Railroad, which is at present on the island, tracks could be brought in here, and a railroad distributing yard, bringing this railroad in contact with the shipping—bringing ships and cars together. The Santa Fe could be brought across by means of car floats or car ferries. It is also designed for a passenger slip here connecting with San Diego proper. I can best demonstrate the way in which the upland is adaptable for warehouse or industrial structures, by this cross section here. This warehouse has railroad facilities at the lower level or embarcadero level, some four or five feet above high water, the warehouse running to the rear—this back street here, the land being some eight to twelve feet higher, the goods could be handled in a second-story warehouse, and the streets connecting would be on a very gentle grade, say from one to three. For instance, this grade here would be about a three per cent grade. This is done a great deal in Brooklyn, N. Y., where they have elevators on the outside of the building, and the goods handled up and down in front, and also in the rear, and there are several cases where the goods are taken up at the rear, which is higher than in front. In other words it would not be necessary to cut all this land down and level this street down. The ground could be used as it is at the present time. I am familiar with tideland values.

Mr. DUNNE. In your judgment, having regard to the commercial adaptabilities of those tidelands on the 1st of August, 1917, what, in your opinion, was their fair market value?

Mr. DENIS. I object to the question on the ground that it is
83 incompetent, irrelevant, and immaterial unless the witness shows that he was familiar with tideland values in the Bay of San Diego. His knowledge is evidently an intimate knowledge of values in the Bay of San Francisco. I do not think that establishes his qualification to testify to values in San Diego any more than his knowledge of values on the Hudson River qualifies him to testify to values in the Port of Seattle; nor has he shown that his knowledge of values is based upon the present needs of the communities in San Diego in the immediate future, under the authority of Boom Company vs. Patterson.

The COURT. It evidently relates to the first of August, 1917. There are some cases, as I understand it, that comment upon the fact that the familiarity of the witness's knowledge subsequent to the time the value was to be fixed is not admissible. Is that right?

Mr. DENIS. I don't think so; altogether, your Honor, there is an authority under certain circumstances, for a different rule, but that is not the point that I am making. This witness has not established a familiarity with the value of tidelands in San Diego Bay, and that is the principal basis of my objection. In San Diego Bay on August 1, 1917; that is the principal basis of my objection.

Mr. DUNNE. The point of the question is that the witness, as an expert civil engineer, familiar with tideland and water front constructions for a long period of years, has probably done more of that construction than any other man in the State of California, that he is competent as an expert to express an opinion as to the value of these tidelands, in view of their commercial adaptabilities. The general condition surrounding tidelands in San Diego Bay and in San Francisco Bay would have a measure of similarity, and experi-
ence gathered in San Francisco Bay would qualify a witness to
84 speak intelligently as to tideland and water front values in San Diego Bay. It is from that point of view that I put the question to Mr. Holmes as to value.

Mr. DENIS. I would suggest to your honor that manifestly you have only to look at that map to see that the testimony of this witness does not contemplate a value as of August 1, 1917, and whatever testimony he gives must be of present value, either for industrial or any other purpose.

The COURT. You don't mean by present value a value of August 1, 1917?

Mr. DENIS. Well, that is substantially the same thing. I mean as of August 1, 1917.

The COURT. The cases pretty near say that most anybody could give his opinion concerning the value, but the value of his opinion is another thing.

Mr. DENIS. I concede that, but I think the witness must show that he knows something of the value at a time stated.

The COURT. Witnesses will probably be brought here from a distance that were not familiar with this bay in 1917 and familiar with the value at that time. It seems to me like it may be an important question.

Mr. DUNNE. The situation, if your honor please, is peculiar in this case. The tidelands here in point of area, extent, and adaptability are unique, in a class by themselves; perhaps no replica of it anywhere in the State of California. Under those circumstances it can not be said to have a market value in the sense that a 25-feet lot has a market value, and, under those circumstances, well-informed persons may be inquired of as to their opinions touching the value of such property. I am now inquiring of this witness his opinion touching the market value of the property, in view of its adaptability for the purposes indicated upon this map, not as to its value
85 when all these improvements have been made and constructed and you have a going concern. Such a value might be fabulous, but its present value, or its value as of the 1st of August, 1917, in view of the fact that that intact and unbroken water-front ownership is presently adaptable to these commercial uses, and was so adaptable in August, 1917.

Mr. DENIS. The point that I make is not as to the lack of qualification of this witness, but I want the witness asked whether he knows the value of tideland as of that date, or approximately that date.

Mr. DUNNE. I think I can put a question to Mr. Holmes which he can answer:

Q. Now, I will ask you what, in your judgment, was the fair market value of these tidelands as of August 1, 1917?

A. I think a conservative estimate would be between five and six thousand dollars per acre.

Cross-examination by Mr. DENIS:

Q. In making the map which is marked D, and which is the one before you, was that map made with a view of the adaptability of the land in August, 1917?

A. Yes, sir.

Q. That would be the adaptability of the land regardless of the wants or needs of the community of San Diego, would it not?

A. Well, to a certain extent——

Q. I mean in 1917.

A. In 1917; no. At that very time?

Q. Well, approximately that very time. I think we agree.

A. No; I think there were needs for that; yes, sir.

It is not a fact that that map is made to show the possible
86 uses in the future of those lands; it is what it could be adapted to at the present day, or what it could have been two years ago. You could create a need for oriental wharves or European wharves or any of the things that I marked on that map by making

that—not create it on paper regardless of the fact whether there is a need for it. We create them because we know that this is the point nearest to the Panama Canal; that it has connections with Imperial Valley and with Mexico; that there is a short line to the Orient, and really a short line to Europe, which is nearer the great circle, even, than San Francisco. This land is no nearer the great circle or the Panama Canal than the land belonging to the city of San Diego on the other side. I know that there is a very large area of tideland on the San Diego side of the bay. I don't know that there are thousands of acres of such tidelands not yet put to any use. I know there are not thousands of acres available; in fact, I know to the contrary. I don't hardly think hundreds of acres. The greater portion of the tidelands available for commerce in San Diego Bay, and on the San Diego side of the bay, has already been disposed of. Not all of it is in actual use; some of it is in actual use. The area of tidelands in actual use, as compared with the area of tidelands not yet put to any actual use, is very small. It would have to be reclaimed—most of the land that is not in actual use. The portion which is in actual use is very small as compared with the area that has not been reclaimed. I have seen a map prepared. I saw it some years ago. I came down here some two years ago; I think it was in 1918 or 1917, for the Bethlehem Steel Company, to locate a plant, a shipbuilding plant here, and at that time we found the land was pretty well occupied. The only available land at that time was up between the Standard Oil Company's prop-
87 erty and the concrete-ship building plant. By "pretty well occupied," I mean it was not available; that is what I mean to say. It was not available because it had been disposed of to the Government and to private parties. The portion we could get was a part that was assigned by the Government to the concrete-ship building plant. I referred to a vegetable-oil plant, and I have indicated that by a wharf marked "vegetable oil." I mentioned
88 in my direct examination that vegetable oil was commencing to be quite an industry in San Francisco—I think for the past three or four years. It was no part of the industry of San Diego Bay in 1917. I said three or four years. I will qualify that. I will say two or three years in San Francisco Bay. In 1917, so far as the vegetable-oil business was concerned, there was no such business existing in San Diego Bay. This map was made in March, 1920. I base my estimate of five or six thousand dollars an acre for these tidelands on tidelands in San Francisco Bay that are similarly adaptable, hardly as good as this tideland here, and land I have had more or less to do with in developing. Tideland contiguous to a community of a half million inhabitants is the measure of my estimate for tidelands contiguous to a community of 100,000. I would not say the same things of tidelands contiguous to the city of New York as compared to these—nor I wouldn't say—the value of this land twenty years from now would be almost inconceivable. The value of these tidelands—its proportional value—is about the

same proportion that the populace of San Francisco would be to the populace of San Diego to a certain degree, but not fully, because a ship will pay the same rates for wharfage, dockage, and toll in San Diego that she would in San Francisco, and you would get the same freight rates from San Francisco probably to New Orleans that you would from San Diego to New Orleans. I base my estimate of five to six thousand dollars an acre on these tidelands for their value in August, 1917, as they stood, without any reclamation, from the fact that they were adaptable to be improved, as shown. In making this map, and in all of my direct testimony, I took into consideration the business needs of San Diego at that time or in the immediate future. In making these various walls and pictures there on that map I considered that it could be developed; it
89 was a nucleus for that, and as the needs required it the land could be developed, but it was there and adaptable to be developed. It is not a fact, from my knowledge of the business wants of San Diego, that it will be 20 or 25 years before this land can be used, as I have shown it to be adapted. I don't think it would be 20 or 25 years; it might be 10 or 12 years, something like that. Business of that sort, when it once starts, grows very rapidly. But I do not pretend there is any use, any present use, for that elaborate scheme I have pictured there in 1917. I don't think there would be at that time.

Redirect examination by Mr. DUNNE:

I am trying to indicate that the lands were adaptable in 1917 for such purposes. I took into consideration that these tide lands were upon the Bay of San Diego, and the geographical and economic relations of the port of San Diego to the rest of the country. I took Imperial Valley into consideration, and the circumstance that San Diego and San Diego Bay, and the Mexican and South American coast, is the natural port of distribution. I took into consideration the circumstance that San Diego Bay is the approximate port of distribution for transcontinental business moving west by the Panama Canal, instead of all rail to other terminal points.

By Mr. DENIS:

Q. In preparing this map shown on Exhibit D did you not have in mind an estimate of the value of the property as testified, five to six thousand dollars an acre, an investment of a very large sum of money to carry this plan through?

A. Yes, sir.

Mr. DENIS. I move to have the testimony, all of the testimony as to value given by this witness, stricken out.

90 Mr. DUNNE. I would like to ask the witness a question.

Q. You don't mean to say, Mr. Holmes, do you, that you were figuring on profits that could be made out of the investment?

A. No, sir.

Q. You mean to say you can not adapt property to use for nothing; isn't that what you meant to be understood?

A. I had in mind it would cost something. There was not any speculative profits, if that is what you mean.

Mr. DENIS. I would ask the court to rule.

The COURT. Upon the modification of his testimony I think it is properly in, and I will overrule the motion to strike.

The WITNESS. Islais Creek is a part of the tide lands of San Francisco. It is about two and a half to 2¾ miles from the center of San Francisco, the business center. The tide land at Islais Creek is not anywhere near as adaptable for commercial purposes as the tide lands in question. In the first place, the water varies on the tide lands known as Islais Creek tide lands from 5 to 30 feet in depth. The foundation, that is the bottom, the pile foundation, is virtually bottomless, the subsoil being what is known as silt, soft mud. In other words, you drive in your pile into the mud at Islais Creek, and at the last blow of a 3,000-pound hammer it will go probably an inch to two inches to the blow. Whereas, in this, it is absolutely solid foundation, sand bottom, none better. And furthermore, in reclaiming the property at Islais Creek you would necessarily have to have a rock retaining wall, and it would require probably years before the land could be built on, on account of the settlement of that character of fill, whereas you could follow your dredge on this character of
90 fill, as I have seen it here in what is known as Dutch Flats and also at the ferry building at Coronado.

LOUIS C. MASTEN, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

I live in San Diego, and have lived there approximately 15 years. That has been, by and large, a continuous residence. During that time I have been engaged in the real estate business. The name of the business with which I am connected originally was Masten & Kendall; later Louis C. Masten. I am still engaged in the real estate business here. My office is in the Timken Building, in this city. Previous to coming to San Diego I was with the Southern Pacific Railroad Company and the Pacific Electric, in Los Angeles. Previous to that I was auditor of the Maricopa & Phoenix Railroad, in Phoenix, Arizona. Prior to that I was in the banking business in San Francisco. The period of time covered by my business experience, first and last, is about 25 years—28 years. I know North Island, and have known it about 15 years. I am very familiar with that property. I have been on it in my automobile; I have walked across it; I have been around it in my boat, when I owned one, a great deal; and I have seen it from an aeroplane; and also my residence is on the bluffs, or rather on the hill in Horton's addition here, where I see the island practically every day, whenever I am home. I have been on the island, I would say, a couple of dozen times. During the course
92 of my experience in real estate in San Diego, I became familiar with real estate values, both for residential and for commercial purposes; and I am familiar with real estate values, both residential

and commercial, in the San Diego Bay district region; and I was so familiar on the 1st of August, 1917. At that date, in my judgment, speaking generally, North Island was adaptable splendidly for residential purposes. It was adaptable for commercial purposes. It was splendidly adaptable for residential purposes, as of August 1st, 1917. It consisted of an absolute unit, owned by one man, readily converted into blocks and lots for residences, for villa sites, and the water feature of the submerged lands for aquatic sports, swimming pools, yacht harbor, and the like, and it could have been used for hotels and apartment houses. It was very well adapted for residential purposes. When I speak of its adaptability to residential purposes, I speak only of the uplands, about 1,233 acres. The land on the water front of cities so situated overlooking the water is, as a general rule, very desirable, and I would consider that North Island is practically all water front property. There is some inside property, but not such a large extent as there is water front. It is to a large extent water front property, however, for the reason that there is no part of it that is distant more than a mile and an eighth from the water. The inner basin, or the basin, the submerged lands, are adaptable for yacht harbors, and the like, and readily lend themselves to the use of boats for people who can afford them. As to the marine zone, or land of this property as being desirable where it overlooks the water, I think I would go back about 1,200 feet from the shore, all around the island, and cut it up into large villa sites. I would use the inner zone for smaller residences and less expensive property. I caused a map to be prepared, indicative of the outer and inner zoning
93 that I have just mentioned. That is the map [indicating map produced by counsel].

Mr. DUNNE. I will offer this simply as illustrative of the witness's testimony, Colonel.

Mr. DENIS. I would like to know before you complete your offer, who made it and how accurate it is.

Mr. DUNNE. It is simply the division of the 1233 acres which we are agreed upon between the outer and inner zones.

The WITNESS. The lands of that outer zone can be subdivided into villa lots, with streets and alleys. By villa lots, generally speaking, I mean larger lots than the ordinary city subdivision; usually of an acre, an acre and a half, two acres and more. The inner zone could also be divided up into residence lots and home sites. Practically the entire area of the two zones marked here is made up of mesa land, without hills and without canyons. It slopes gently toward the water, and is, generally speaking, without going over it with an instrument, flat, a trifle higher in the center than on the shores. The soil is—well, about as near as I can say, what you would find in your garden, if you had a good garden, and is adapted to arbor culture, and trees and shrubs. A house builded on this land could be in a very short time surrounded with flowers and be made extremely attractive. The climate, I think, over there is better than the climate in San Diego and Coronado. In looking at North Island from my window

in the morning, I frequently noticed that it is perfectly clear over North Island, where the uplands of San Diego would be covered with fog, when the North Island shore and North Island itself was absolutely free. I believe that Point Loma deflects the fog and the wind from North Island. I would say that the climate of North Islands is very similar to that of Coronado Island, except in this instance
94 of fog of which I speak; and in that instance, and wind also, the advantage lies decidely with North Island. In relation to tide lands for the purpose of adaptation to the residential features of the case, I am not including at this time the commercial point of view. With a very small amount of dredging, and the placing of the spoils on the present inner ground, a very pretty and serviceable yacht basin could be made of the inner basin, where small boats might have their anchorage, and where they might have their fun, we might say, where yachts could be anchored for those who owned such things. A swimming park might be made there, and it could also be used for fishing. I have often thought of that, or rather I thought of that in connection with Glorietta Bay, which is on South Island, that is used that way. I am familiar with the expression sometimes used in municipal administration of "water park," or "aquatic park." This water land would be adaptable from that point of view. I have been in many cities in the East, New York, Chicago, St. Louis, Kansas City, Omaha, New Orleans, Philadelphia, Atlantic City, and I have also been in practically all the principal cities on the west coast—the Pacific coast. I have been in Seattle, Portland, Tacoma, Sacramento, Stockton, El Paso, Phoenix, Arizona, Tucson, Los Angeles, San Francisco—practically all of the large cities on the Pacific coast. This land, North Island, in respect to its availability and desirability for high-class and moderately developed residential purposes, is as good as any in the United States, generally. I do not know anywhere in the United States a more desirable or suitable place for high-class residences than North Island. North Island is located to the north of Coronado, and is connected therewith by a narrow strip of land that is shown on the ocean front. This narrow neck of land is several hundred yards wide, and connects North Island with Coro-
95 nado [indicating on map]. That strip of land between the islands is adaptable for a boulevard. Earlier than 1917 that strip of land was used for communication and access between the islands. When this jetty was built they carried many thousand tons of rock in steam cars or by the railroad across this narrow neck of land. Besides the communication and access between the two islands by solid land there is at present a bridge across here—two bridges, in fact, on one of which the San Diego & Arizona Railroad has its tracks. Spanish Bight, at the place indicated by the railroad track, is adaptable for a bridge for foot passengers, vehicles, and railroad trains, and was so adaptable on the first of August, 1917. In my judgment this property ws adaptable on the first of August, 1917, for commercial purposes. The island, as I

have said before, is almost level. It could very easily be converted into railroad yards, transfer points, sites for warehouses, business blocks, if need be—very adaptable for that. These commercial adaptabilities would be availed of on that part of the island that is adjacent to the submerged lands. I am familiar with water-front conditions and tide-land values in San Diego Bay. The condition of the city water front for its availability for commercial enterprises is and was in 1917—a very large portion of it—taken up under lease from the city of San Diego. It has been largely absorbed with enterprises of various characters, fish canneries, fish warehouses, boat shops, the municipal pier, the Spreckels Wharf, the Santa Fe Wharf, the Pacific Coast Steamship Company's Wharf, the Benson Lumber Mill, the McCormick, the Standard Oil, and so on. Those, by and large, were relatively small holdings as compared with these tide lands.

Mr. DUNNE. I will ask to have this map used by the witness for illustrating the outer and inner zones marked "Defendant's Exhibit E."

96 The CLERK. Defendant's Exhibit E.

The WITNESS (map shown witness). I recognize this map—the United States engineer's map. I am familiar with it. Commencing here at the south line of the city, we find that this land is taken up by the Government of the United States, and is the point at which the concrete ships are being constructed. Further along we have the old franchise of the Buchanan Lumber Company. And as you go along you will find other enterprises. I can't recall them all. This is the land owned by the Government, and upon which at present is being built the marine base. Over here is the land owned by the Government, which is given to it by the city of San Diego for use of the naval training station [indicating on map]. These colored portions in between represent the small private holdings that I have referred to; they are in the nature of leases from the city—twenty-five and fifty year leases. Ever since I have been here the city has pursued that policy of putting the water front in such proprietary relation.

Mr. DUNNE. I will offer that Government map in evidence as our Exhibit F.

The CLERK. Defendant's Exhibit F.

The WITNESS. The circumstance that a large tract of land like North Island, regarded from the point of view of any use, residential or commercial, for which it is adaptable, is in a unitary, single ownership—that it has wholeness of ownership for the purposes of purchase and sale—is, in my judgment, a factor or element of value in respect to the property. Under one ownership any piece of property, any enterprise, can be handled as a unit. It is susceptible to improvement according to the ideas of the one person. You don't have to go about getting the consent of other people, other corporations, who might be unwilling to submit to improvements of any kind.

97 Mr. DUNNE. Q. Now, Mr. Masten, I will ask you, having in view the purposes to which this land is adaptable, and as of the first day of August, 1917, I will ask you what, in your judgment, was the fair market value of that entire tract as of that date?

Mr. DENIS. Meaning the upland?

Mr. DUNNE. No; I mean the uplands and the tidelands—the entire tract.

Mr. DENIS. I object to the question on the ground that the witness, from my recollection, has not qualified himself to testify to the value of the tidelands.

Mr. DUNNE. Oh, yes; I asked him particularly.

The COURT. Well, does he know the area? He has not said anything about the area.

Mr. DENIS. That is the ground of my objection.

Mr. DUNNE. Do you know the area of the tidelands?

A. I do; 663 acres.

The COURT. And you think you know the value of the land, including the uplands and that subaqueous land?

A. I think I do.

The COURT. Overruled.

Mr. DUNNE. Q. As of the first day of August, 1917, Mr. Masten, what is your judgment, regard being had to all the purposes to which the land as an entirety is adaptable—what, in your opinion, was its fair market value as of August first, 1917?

A. I would say $7,035,190.

Mr. DUNNE. That is all.

The COURT. Let this witness stand down. I would like to ask Mr. Holmes a question before we take a recess.

98 HOWARD C. HOLMES (recalled).

The COURT. Q. In giving your estimate of the value of these lands, did you base your opinion upon anticipated investments of a large amount of money or expensive improvements and water works, or did you base it upon simply the adaptability of the land as of August 1st, 1917?

A. I based it upon the adaptability of the land as it was in August, 1917.

LOUIS C. MASTEN (recalled).

Cross-examination by Mr. DENIS:

During the fifteen years that I have been in the real estate business I have subdivided but one property. It is a small piece, 40 or 50 acres. I have had no other subdivision on the market. In August, 1917, these lands could have been made use of for homesites, for business purposes, and for commercial purposes. The value of North Island, $7,035,190, is not the subdivision value. If that piece was subdivided, it would be worth very many more times than the figure that I have given, very much more. That is the answer to the question that you have asked me. I have absolutely not taken into consideration at all its value after it was subdivided. That value of

seven millions was the present or rather the actual value of North Island in 1917. The value of the submerged lands I put in at $870,540. That would be $1,000 per acre. The upland, 1,232.93 acres, $6,164,650, at $5,000 per acre. I arrived at the value of $1,000 per acre for the tidelands by comparing it with the sale of other tidelands about the city of San Diego. Practically all of the tidelands or lands susceptible or adaptable for marine purposes, have been taken up—were not available for purchasers. I will take the figure from you, that there is more than three miles of water front in the control of the city under the act of 1911 that is still available for commercial and marine purposes, not in the hands of private ownership. I don't know the exact figure. There is some considerable amount that is not available, but that is tidelands considerable distant from the center of town, on the Point Loma side of the bay. I don't know how many leases the city and State together have made, of tidelands on the Bay of San Diego, up to date. I do not know the rate per annum per acre at which the city is leasing tidelands to industrial enterprises. I can not approximate it in any way; it would be a guess. In my estimate of value I did not take into consideration the cost of improving as large a body of land as 1,200 acres. In estimating a value of $6,000,000 for the upland, I did not take into consideration the length of time which would elapse before the owner could dispose of his property on the market. I did not think it was necessary. I think that if a piece of property should be thrown on the market—should have been thrown on the market at any time previous to August, 1917, that it would not have taken a very long time to have sold it, on account of its desirability. Coronado Island and North Island are very similar from the standpoint of soil. The climate is similar, I think the favor being toward North Island on account of the fact that the winds are tempered on North Island by the Point Loma Headland; also, the fog, instead of coming over Point Loma, goes around the edge and sweeps in over Coronado, through some considerable extent. I would say that the accessibility of North Island and Coronado Island is practically the same. In these days of transportation, ferry boats and one thing and another, why, they are almost exactly the same. In August, 1917, the ferry transportation to North Island was not as accessible as the ferry transportation to Coronado Island. It had not been developed at that time.

The COURT. You speak, Colonel Denis, of Coronado Island. There might be some confusion arise from that. It is called South Island, as I understand.

Mr. DENIS. It is now called Coronado Island, but I will call it South Island. I think you understood what I meant.

The WITNESS. Oh, perfectly. In August, 1917, the transportation facilities to North Island were not the same as the transportation facilities to South Island. In 1917 South Island had direct access to the ferry, the ferry landing right on South Island. The island of Coronado, straight across, would be about a mile and a half; then

they would have to go about another mile to get onto North Island on the west coast. South Island was subdivided and put on the market for sale about 1888. I have been told that there was a very great real estate boom in 1887 and 1888. I do not know what proportion of the subdivision called Coronado still remains in its original ownership. I would not say that it is as much as 40 per cent. I do not know. I know that some of the property is still in the ownership of the defendant company. If it were true that 40 per cent of the whole of the subdivision put upon the market in 1887 was still in the ownership of the defendant here, I would not change my opinion relative to the speedy disposition of lands on North Island. I think in my direct examination I brought out why the land on Coronado Island or in Coronado subdivision has not been disposed of in more than thirty years, and yet the land on North Island would be disposed of in some, as yet unnamed, period of time. At present North Island is under one ownership and can be handled exactly as the
101 owner chooses. And besides that, if it were subdivided in a modern way it would have just as large a sale, in my opinion, as Long Beach, Miramar, Montecito, Pasadena, and other places have. The demand for it would be very large, in my opinion. When I refer to sales at Montecito and Long Beach and the various places named I am giving you to understand that I base upon those sales my answer that North Island would be readily disposed of. I am basing my answer on the knowledge that such properties have been sold; not the whole of the subdivision; such properties have been sold, and there is more or less demand for high-class property of that kind. I do not know whether the demand is more or less. I don't know what proportion of the Montecito subdivisions have been disposed of. I do not know anything about the Pebbly Beach subdivision in Monterey County. I know what the movement in subdivision property is in Long Beach is only by real estate items; that is all, not from any personal knowledge. I know particularly one particular friend of mine that has bought property at Marimar and paid a fancy price for it. I don't know the acreage of that sale. Possibly near five acres. It comes to me through my wife and her friends. That is about the information I have. I do not know of any other sales at Miramar. I do not know how large the subdivision of Miramar is. I haven't had anything to do with any outside subdivision other than San Diego. I do not know how large the subdivision of Montecito is. I do not know, either of my own knowledge or from hearsay, of the size of subdivisions in or around Long Beach. In my preparation for testifying in this case I haven't figured the cost of improving and subdividing this 1,200 acres of upland—not even the number of miles in which the streets would be platted, nor the cost per mile, nor the lighting system, nor the water system, nor any other improvements in a subdivision. In arriving at the
102 market value of North Island, to wit, more than seven million dollars, I took into consideration the availability of water for such a subdivision. The water would come from across—either from

San Diego or from Coronado. I knew that there was a sufficient amount of water from Coronado to supply a subdivision of twelve hundred and odd acres. If I figured how much water would be required to supply 1,200 acres of high residential property, it would be a guess. I don't want to guess on it. I have stated that I took into consideration a sufficient water supply to furnish a high-class residential subdivision on North Island, and I stated that I knew there was enough water for that purpose. There is sufficient water about San Diego and the bay region to supply an increased population to the city of San Diego, of which this subdivision would be a part; a subdivision of which I speak, villa sites, and a large acreage in the homes, would not require a tremendous abundance of water. It would not have so large a population as a thickly settled residence section would have. My attitude is, to an extent, that a well built up community of closely connected homes, buildings without yards, requires more water than a highly developed villa site region, with acres and acres of lawns and trees, various vegetation requiring irrigation—I withdraw, if I may, my answer. It was not expected, and I was not—I am not prepared to talk on the water question. I know pretty thoroughly well that borings throughout this section here have produced water at about 750 feet in large quantities—artesian water, as a matter of fact. They had one well in Palm Canyon that produced about thirty thousand gallons of water a day. That is the only one that I know of that the flow of water was assured. However, I do know that there is a well in Mission Valley which produces artesian water at a depth of something like 900 feet. A well in the park is about 750 feet
103 deep. They drilled a well Sorrento, looking for oil. They struck an abundance of water there at about that depth. They drilled a well on the Payay Hills up here 12 or 13 miles, and they struck artesian water—not artesian, but an abundance of water there. The well in Palm Canyon, in the park, was one of the first sources of supply for the city of San Diego. The wells of which I speak have been drilled within the last five or six years. I do not know what the daily capacity of the well in Palm Canyon is today; but all I am advancing there is that it is my theory that there is plenty of water under San Diego for any purpose. My home is in Horton subdivision. It is up here a mile due north; approximately a mile north. Loma Portal and Loma Alta are subdivisions on Point Loma. There are lots of subdivisions. Loma Portal was the prominent one. That was subdivided within the last four or five years. I can not recall Point Loma Villas from the name. The Loma Portal subdivision was possibly forty acres, just a guess. It is very beautiful land. I do not know how much of that property has been marketed since it was put on the market. I will say a good deal of it. Somewhere along about half of it. I am not selling any Loma Portal property. I kind of see the name, Point Loma Villas, but I can not identify the property. I know it is a subdivision, but I can not identify it. I have seen transfers of Loma Portal property since

1913. I think there have been a number of sales made in Loma Portal property since 1913 or 1914. In my business experience I do not know of the subdivision for high-class residential purposes of a tract of land of 1,200 acres in extent. I have never heard of a subdivision of land in excess of 500 acres for residential purposes at the same time. I know that South Island was subdivided into what is known as Coronado about 1887. I would think that that subdivision is approximately in the neighborhood of 600 acres. I
104 stated that I did not know what proportion remained in the original ownership. Coronado City, when it was divided in 1887, was in a single ownership. This same ownership is the defendant here, the Coronado Beach Company. I know Mr. John D. Spreckles; have known him possibly ten years. Our relations are friendly. I have written a few insurance policies for him. In my calculation as to the market value of North Island in 1917 I did not consider how long it would take—how many years it would take to dispose of that property. I thought of the interest proposition in making my figures; but if you consider interest in there, I think you should also consider or be allowed—if a man works at it from that standpoint he should be also allowed to figure on the speculative value of the land, because the land in question no doubt would increase in value as the years went on. That is just a thought that I have had. Of course, I know that every subdivider considers the price that he pays, interest on that price, the probable or estimated cost of improvements, interest on the estimated cost, with his guess of the number of years that it would take him to dispose of his property. But we are figuring right now on the market value of the land at the present time, not what we are going to put into it, because if we go and put in and figure in the interest and the cost of the streets and putting in the trees and the gas mains and sewers and the electric lights, and sidewalking it and curbing it, we add that price, to be sure, to the bare value of the land which I have given you here; but when you sell that land we add not only the cost of those several things, but we add interest, we add taxes and everything else; and under those circumstances, if you are asking me a figure of that kind, why, I would say that the value of that land was—well, it is hard to say. If a millionaire were to come to San Diego and apply to me to find an investment for him where
105 he would be reasonably safe in getting his money out of his investment, he would surely ask me to make a calculation of all those things. First, the seven millions; next, the interest on that for such time as I assured him I could sell the land; next, the cost of improvements—the electroliers, the paved streets, the sewers, the water mains—all that goes to make up a completely improved tract. And I would answer you just as I have before, that if you are going to ask me what the speculative value of that land is, which you have not done, I would say it would be worth, after we put in the cost of these various improvements that we have mentioned, it would be worth very much more than I have given as the value of

that land at the present time. Then, after giving those figures to my client, I would give him, or he would ask me how much I would get out of the land for him; that is the way these things are done. That is the method of procedure I would use. That is what I did in the subdivision of those forty acres I have referred to as the only subdivision with which I have had any experience. I am not figuring the worth of this land for subdivisional purposes, as I stated before. I am estimating it and giving my value for the of the land as I see it today, not for subdivisional purposes. I said the land was adapted to subdivision purposes for villa lots and smaller villa lots. It is adapted for villa lots and smaller villa lots; that is the reason I gave the price of seven millon dollars—six million dollars for the residence part. I stated the value to be $5,000 an acre, because that is my judgment of the value of the land, because it was adapted—not that I was going to do it, but that it was adapted for that purpose, and being so was worth that amount of money. I know, more or less, how active the market for Coronado lots is or has been since August, 1917. It has not been active. In making my estimate
106 of seven millions as the market value of the land I did not take into consideration at all what this land was assessed for by the county assessor or the city assessor. I did not know what that land was assessed for and has been for four or five years. I never inquired. That will apply equally to the tide lands. I don't know what they were assessed at. This sketch, Exhibit E, is a sketch made under my direction of North Island. It shows 754 acres in light green or light blue here—478.86 acres in light green or olive in the center. The surrounding piece I take to be the more valuable. As to the water front, the one on the ocean and the one on the bay, I made that sketch to show that; and in comparing it with the Coronado valuations, or what has been sold in Coronado, probably the stretch on the ocean is the more valuable; but I haven't any doubt that in this particular instance, where North Island is concerned, that the land all about the island, both fronting on the bay, on Spanish Bight, and on the ocean, would be about equally valuable. In Coronado, I will have to explain, the Beach Company has reserved that portion of the island that is contiguous to Spanish Bight and to the bay, and the residences do not go down to the water in any instances. That being the case, it would not be very hard, I imagine, for industries to get into that portion that is reserved, if they paid the price for it, and thereby depreciate the value of the rest of the island. So lots facing on that part that is reserved do not find such a ready sale; they are not so valuable. In estimating as an average $5,000 an acre for this land marked 40.66 acres I did not take into consideration that there might be wharves and warehouses fronting on that. That probably would make a difference in my valuation of the lands that are along those tide lands. In my estimate I gave a thousand dollars per acre value to the tide lands, the submerged lands, and also to some lower lands in—well about

207 acres of lower land than the mesa land, making about 809
107 acres in all; I gave those a value of about a thousand dollars an acre, as being tributary or contributing a certain class of improvement to the land itself. Now, if you take out—if you put factories and wharves along the north side of the island, up in the section that you say, the chances are that it would take away from the value of the other portion of the island. But if you devote that to business and commercial purposes and railway terminals and the like, it will add, or should add, considerable to the value of more than a thousand dollars which I am giving to the tide lands. It might reduce some the residence value of $5,000 an acre. The subdivision of 40 acres that I made myself was out in East San Diego, four or five miles from the city proper. It was just small stuff, nothing prominent. It was sold very quickly, within a few months. It was not comparable to this at all.

Redirect examination by Mr. DUNNE:

I have been in the city of Portland, and know that the Willamette River flows through Portland. Portland is upon one side and Portland is upon the other. If the population of San Diego should increase 100,000 in the next five years we would not have a bit of trouble about our water. This is the part of North Island nearest San Diego, and faces on the deepest water in the bay. No dredging whatever would have to be done in order to land a ferryboat or any other kind of a ship at that particular point, except possibly the building of an apron wharf, such as Mr. Holmes told us about here. As a matter of fact I was standing on the island at about one of these points the other day, and one of our biggest warships came by, going south, and I really believe if I had had a stone I could have thrown one on
108 its deck, it was so close. The old shipways used to be here, and they used to haul ships out of the water over there. I fished from the end there, and in throwing out my line, or dropping the line off my pole, the boat might be carried with the tide a little bit further out, and where it might be six feet here, it might be thirty or forty feet, ten feet away. It is very precipitous there, and it would require no dredging or anything else to get a ferry there. That isthmus between North Island and South Island certainly is available for land transit between the sister islands. I can't say that I do know whether it has been hitherto the policy of the Coronado Beach Company not to sell their property.

GEORGE BURNHAM, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

I have lived in San Diego about 17 years. In the first instance after I settled in San Diego, my business was the real estate business. Part of that time, seven years, I lived in National City, but did business in San Diego. During this period I have conducted my business in what we have been calling the city of San Diego. I was engaged in the real estate business in San Diego about 14 years. When I came

here in 1903, I associated myself in business with C. A. Scott, who had an established business here, real estate business, and had been in business here for some 21 years, and we did business under the
109 name of Scott-Burnham Investment Company. Mr. Scott retired, I think, from business, in something like four or five years after we had been together, and I continued the business until the fall of 1911, and then became associated and identified with the San Diego Securities Company, as vice president; and was connected with that company as its vice president until within the last six months. The San Diego Securities Company during those years was engaged in the business of buying and selling and developing real estate. Since I went into the San Diego Securities Company I have formed a new business association, as vice president of the Southern Trust and Commerce Bank. I am familiar and was in 1917 with real estate values in the bay district of San Diego. I know North Island. As of August 1st, 1917, that property could have been used for more than one purpose. I should say for residential purposes or commercial purposes, and as a matter of fact it has been utilized for an aviation field. It had and has, I think, various uses and adaptability. Its residential adaptability, as of August 1st, 1917, was as a high-class residence subdivision. It would have appealed to those looking for desirable home sites, people who could afford to pay a good price for something that they wanted, something that would appeal to them. It has an individuality that you do not find in many pieces of property. It is so situated as to be almost surrounded by water. You have the advantage of the ocean front and also of the still water. The climatic conditions are ideal. It has a beautiful outlook, part of it fronting on to Point Loma, on to the channel and the bay. Every vessel sailing the harbor has to pass it, which adds interest and is an attraction. Another part faces Coronado South Island. The soil is good and it lies well. I don't know of any hardpan or stone or rock over there. I believe it would lend itself
110 splendidly for landscaping in connection with a high-class restricted residential subdivision. Indeed, I do consider the factor of a unitary and intact ownership an element in the residential adaptability and suitability of that property. I think it has great value, for the reason that the acreage or the area is sufficiently large so that if subdivided for residential purposes, villa sites, adequate building restrictions could be maintained and the property and the homes protected so that no undesirable buildings or industries could encroach upon them. I think the 663 acres of tidelands off the northwest shore are adaptable as entering into the residential availability of the tract. One reason is that it insures to the residents here and the property owners fronting the water access to the water, and the fact that no industries could be built in front of them. I heard the testimony a little while ago of Mr. Masten, and also of Mr. Holmes, and I have often—I have at times expressed the same ideas, even years ago, that a beautiful aquatic park could be developed and maintained there, and also, that even a Venetian village effect could be worked

out there splendidly, making beautiful homesites on small islands, which could easily be thrown up. We have so much of that Dutch Flats over there across the bay from North Island, which lies beyond the bulkhead lines as established by the Government, and also the middle ground, which will be removed from our channels some day. I am told there is more than sufficient material to fill the submerged lands lying back of the bulkhead line, and that that dredged material will possibly have to be carted out to sea unless some place can be found for depositing it. Now, that would work out, in my mind, in building up these islands, either for club houses or hotel sites or for villa sites. That is a possibility. In speaking of the
111 adaptability of the tidelands from that point of view, I am excluding their commercial application. I think those tidelands are capable of commercial use; not in connection with North Island as a residential proposition, because I think one would kill the other; that is, I don't think they would work in conjunction. I believe North Island can be developed as a residential proposition, or I think it could be developed as an industrial and commercial place, terminals, marine terminals, railroad terminals, and industrial sites, but not in connection with the residential possibilities. The application of the tidelands to commercial purposes would detract, in my judgment, from the character of the residential territory. I think the tidelands could be utilized splendidly for boating, swimming, bathing, and many uses of that kind. In August, 1917, much of the water front of San Diego itself had been appropriated. I made an estimate of the fair market value of North Island, as of August 1st, 1917, in view of all the adaptabilities to which, in my judgment, it could be put, of $7,884,639.

Cross-examination by Mr. DENIS:

In making up that figure I took that from sales that I was famiar with. I understand there are 1,233 acres, approximately, of mesa land on North Island, and I figure that at $4,789 per acre, which gave me $5,904,837. The balance is not all tideland, Mr. Denis. Some of it is marsh land, for instance, the Spanish Bight and Whalers Bight, and so on, would be, I suppose, called marsh land. You can walk on it. But, including the marsh lands and tidelands and submerged lands, I think there are about 909 acres, and I estimated that at five cents per square foot, which would be at the rate of $2,178
112 per acre, taking it as a whole. That gave me $1,979,802, or a total of $7,884,639. The exact figures on the 1,200 acres are $5,904,837. I would not give a valuation of five cents a square foot for the lands between low and high-water mark, the same as lands entirely submerged by water. That could be subdivided more than I have subdivided this 909 acres. I took the submerged lands and the marsh lands and the tidelands as a whole and gave a value to the three different kinds of lands. Some of it would be worth more money than five cents a square foot. If I were segregating it I would put the price more on the marsh lands than that. None of

it considerably less than five cents a square foot. As a matter of fact I would not put it at less than five cents a square foot, even though I was segregating it. I never heard what these tidelands were assessed for by the State and county authorities; nor what the upland, or the 1,200 acres, were assessed for by the State and county authorities. I was not interested in that when I was making up my appraisement. I don't think that South Island has all been disposed of and gone into other ownership than that of the original owner. In fact I know it has not. I don't know exactly how much of it is still in the original ownership. I have subdivided three or four or five tracts. The largest area of those subdivisions was 200 acres. The names of the tracts are: Loma Portal No. 1, Loma Portal No. 2, Point Loma Villas, Olive Wood Terrace, fifty or sixty acres in that; eighty acres in Point Loma Villas. I would say in Loma Portal Nos. 1 and 2, they join, practically one tract, possibly sixty or seventy acres, for the two; I think about that. Now, this other tract of 200 acres, while we have worked on the subdivision, on the scheme, on the plan, I will say, of subdivision; the plat has not been offered yet for the approval of the authorities. That is not a subdivision that has been put on the market. Point Loma
113 Villas as a whole has not been put on the market; in fact, it has not been completed. While the plat has been filed and some improvements made on one end of it, it has not been completed, and has not been placed on the market generally. A few pieces have been sold out of it. For instance, Mr. Bridges, before we had scarcely any improvements, while the sage brush was still on it, bought, I think—well, it was a villa lot. I have forgotten how many acres. I could tell by some maps here; I could figure it; and I think he paid at that time—possibly 20 lots were put on the market for sale. The Loma Portal tract was put on the market in 1912 and 1913. All of No. 1 has been disposed of. There may possibly be one or two lots left in it, but I think all of No. 1 was sold out; and No. 2 was placed on the market, I think, in 1913; it may have been the latter part of 1912 or the early part of 1913. That has not all been sold. The depression came on about that time and the real estate market became rather inactive. Possibly a third of that was sold at prices, however, higher than No. 1. The real-estate market in 1917, due among other things to the war, was very quiet. I think the market shows a slight improvement, possibly a slight improvement now, which commenced within the last six months. There is not room enough to build up islands and canals for Venetian villas inside of the bulkhead line. Therefore, if that plan were carried out, it would have to be carried out between the pierhead line and the line of high-water mark. I know the pierhead line—it is supposed you can not build any solid structures between the pierhead line and the bulkhead line, although those plans have been modified by the Government engineers at various times. I took into consideration, in the subdivision plan, the necessity for the improvement of the property for a high-class residential subdivision, such

114 as streets, sewers, water, lights. I know about what it would cost per square foot. I wasn't figuring on the cost of developing it. I was merely figuring on the basic value of it. I can give you an estimate of what it would cost us to develop Loma Portal for instance. That is, I suppose, one of the best-developed tracts in San Diego. While we did not put in concrete or bithulitic pavement, we put in pavement there which cost, I think, pretty near as much, to the depth of six inches. We put in concrete walks, curbs, and gutters. We put in sewers, water, gas, ornamental shade trees, ornamental lamp posts, carrying 220 watts at every street intersection, and leveled the lots in nice shape, ready for building. And that averaged $7 per front foot, or, on the basis of lots, 50 by 100, about seven cents per square foot. Where lots are 50 by 100 feet deep the cost per square foot is about 5 cents. Where the lots are 50 by 100 feet deep the cost is seven cents per square foot. Now, if the lots were large villa lots or villa sites, the cost would be relatively less than five cents per square foot. It is safe to figure five cents per square foot. Not only did we install those facilities, but we carried the laterals from the sewer, from the water, from the gas mains to the property line of every lot; and that was a total cost of $350 per lot, or seven dollars per front foot, or the figures per square foot as I have given you. In my direct examination I don't think I was asked as to the value of the tidelands for commercial or residential purposes. I based my estimate of one million nine hundred thousand dollars for the tidelands on my knowledge of sales, and what property is sold for around San Diego Bay, and prices asked for property, and also the knowledge of others. I will say that in my judgment those tidelands, submerged lands, marsh lands, and meadow lands are worth the figure I placed on them, either in con-

115 nection with a residential subdivision of North Island or as a Marine terminal, commercial. I know of the leases made by the city of San Diego to various enterprises only as a citizen. I do not know the actual number of such leases made by either the State or its successor in interest, the city. I know the rentals vary. I recall having secured a franchise at one time for a wharf, for a small pleasure pier, for which we paid five dollars a month, just nominal rental. There were some leases made by the city many years ago, for instance the lease made to the Pacific Steamship Company, and there may be many—I could name many leases, I suppose, the majority of them, but I can't tell you what they pay.

Redirect examination by Mr. DUNNE:

I think that the price of five cents per square foot for those tidelands would be a very reasonable one, for commercial purposes, because I know of property having been sold at more than that. I think they have a potential value for strictly commercial purposes in contradistinction from residential purposes of up to thirty cents a square foot. That would be approximately twelve or thirteen thousand dollars an acre. By potential value I mean the develop-

ment of them, and of the cost—I know of lands that have been reclaimed and filled at a cost of thirteen cents per cubic yard that would be—it depends upon the depth of the fill. It would run anywhere from a thousand—about a thousand dollars per acre, a thousand or fifteen hundred dollars per acre. I think in the present condition of those lands that five cents per square foot would be a very low estimate. I base that upon actual sales made; and in
116 making that estimate I have in mind the commercial adaptabilities of the tideland property.

FORD A. CARPENTER, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

My business or profession is that of consulting meteorologist, which means weather man. I have been a meteorologist for a little over 32 years. I was in the service of the United States Government as a meteorologist from February 2, 1888, until September 15, 1919. I was observer at Portland, Oregon; at Port Cambee, Washington; chief clerk of the Weather Bureau office in San Francisco; official in charge of the Weather Bureau station at Carson City, and State weather service director for six years; official in charge of the Weather Bureau office in San Diego for 16 years, or from March 30, 1896, until June 30, 1912; and from July 1, 1912, until my separation from the service on September 15, 1919, official in charge of the Weather Bureau station in Los Angeles.

Q. Now, I will ask you, Doctor, having in mind the residential adaptabilities of the San Diego Bay region, how is the climate of San Diego related to that subject matter?

Mr. DENIS. That is objected to as being incompetent, irrelevant, and immaterial, not meeting one of the issues of this case. I can't understand that this witness is qualified to apply the most beautiful climate that I know of anywhere, which this is, to real estate values, unless he is going to further develop that he is in the real estate business, and can testify to direct connection in values between
117 a perfect climate and the real estate market. I do not think that it is competent evidence, your honor.

The COURT. I will overrule the objection. He means by that how it affects the country, whether it makes it a good or a bad residential property.

The WITNESS. My reply would be this: That there are few districts in the United States, if not in the world, with the climate as superior for residential purposes as that of San Diego. First, the characteristic of the climate is its freedom from storm conditions, owing to the fact of its being far south of the storm tracks; second, its equability, that is to say, freedom from high temperatures or low temperatures, by the presence of the great body of water to the west, and its maximum amount of sunshine, owing to its being to the south and free from the influences of the storms aforementioned. I know North Island in San Diego Bay. My observations of the

weather conditions of North Island are based upon observations as a resident for 16 years, several visits there, and the application of the official data at the Weather Bureau station at San Diego to that district. A very important condition to which North Island is related is the fact that it is surrounded by water, having a temperature that varies probably less than twenty degrees in the year; and second, the protecting arm of Point Loma, which shields it from the winds from the northwest and west and north. It is less windy than probably other districts in the San Diego Bay region that I am familiar with, and it is less foggy than portions of San Diego City and portions of Coronado south of Glorietta Bay. The aforesaid Point Loma would act to a very great degree in protecting it against fog in the prevailing northwesterly winds—the moisture-bearing winds would be deflected upward, and much of the fog would be condensed along the surface of Point Loma. You
118 notice that when you see Point Loma covered with fog other sections are comparatively free from it. We have a very excellent example in the fact that the base or the sea level, rather, district, within the vicinity of Point Loma is freer from fog than the point itself in the change of location of the lighthouse from the summit of Point Loma, known as the old Spanish Light, to that of the sea level. They had to remove the light, although it was a very much better location as far as visibility was concerned, at four or five hundred feet above the sea, than at the sea level; but owing to the fog conditions the lighthouse was lowered to the sea level or nearly so. So far as the humidity is concerned, it would be greater on North Island and in Coronado than in the residential portion of San Diego, because of its elevation and near sea level, and the fact of its being closer to the sea. There would be less variation in the humidity. For example, on Florence Heights, where I lived for 15 or 16 years, the humidity there would be less than on North Island or Coronado, and there would be a greater range in the humidity. That is, there would be several hours during the night—I am speaking now of the residential district of San Diego—when the humidity was high, but there would be a corresponding period, and probably a longer period, when the humidity was comparatively low, whereas on North Island the relative humidity would be continuously moderately high. I can indicate the characteristic temperature of North Island or the temperature range only by inference. Probably having a maximum number of hours between 40 and 80. There is not a climatic subjection to such extremes above 80 and drop below 40 in this region. It is freer in that respect. It is my memory—and it could be easily verified by our records upstairs—that San Diego has
119 less than one hour of temperature on an average in the course of a year above 80. A temperature below 40 is very infrequent. I think that up to 1912 there were four times that the temperature dropped below freezing; and in 1913, the year of the great freeze, the temperature dropped to, I think, 25. I would not call the climate of the San Diego Bay region a mild climate in the sense

of being an enervating climate. I would consider that San Diego was a splendid climate for healthy people, but not a climate for a sanitarium. It is a place for live men and women to live in.

GEORGE L. BARNEY, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

I have lived in San Diego since 1906, and my business has been general real estate business, and some subdivision business. I was never in the real estate business anywhere else than here. I have carried on the real estate business in San Diego about 12 years. At first we had an incorporated company; afterwards it was a partnership. Mr. McKie, Mr. Kettner, and Mr. Wetzell were in the incorporated company; the name of the firm now is Barney & McKie. I am still engaged in the real estate business as a member of that firm. I am familiar with real estate values in the San Diego Bay region. I know North Island. I have known that property ever since I have lived in San Diego. North Island was adaptable for residential purposes, in my judgment, as of August 1, 1917. It could have been used for both residences and commercial purposes. I think it is the most uniquely located piece of land in one body that I know of
120 for a high class residence section. It is surrounded by water, practically, and its close proximity to Point Loma protects it from the winds. It lies high and dry. It is practically level, and it is within a reasonable distance of the business section of San Diego. I think the tide lands would be quite a feature in connection with the residential section, providing they were given over for the use of the residents of North Island. They could be used for private piers or community piers, or it could be used for harborage, or it could be used for anything where a water front is used. I am not familiar with municipal institutions sometimes called water parks or aquatic parks. I think the tidal waters are adaptable to use as a pleasure ground upon water. This property was available as of August 1, 1917, as it is to-day, for wharves and for drydocks, for manufacturing, for railway terminals, for any business in connection with a bay, as pertaining to shipping. Quite a portion of the water front of the city of San Diego, as of 1917, had been leased by the city for different purposes. Some of those holdings were large and some of them were smaller. I have seen the United States Government map that was exhibited here this morning. I think the colorings there upon the water front represent the water front holdings in private ownership, exclusive of the United States holdings and municipal pier. In my judgment, as of August 1, 1917, the singleness and intactness of ownership of this entire tract did enter into its value as a whole, because it could be developed along any line for residence purposes. At the present time, or at no time, has there been any really restricted residence district in San Diego. In all portions of the city you can build anything you want to build—garages or blacksmith shops or grocery stores, and the possibilities of North Island for an exclusive residence

district is the fact that it is one ownership, and could be re-
121 stricted absolutely for that purpose. If North Island is used for commercial and residence purposes, I would value the tidelands at $4,000 an acre, comparatively. In view of all the adaptabilities to which North Island can be put, and as of the 1st of August, 1917, in my judgment, the fair value of that tract as a whole, my valuation, would be $6,947,865.

Cross-examination by Mr. DENIS:

In giving a valuation of $4,000 an acre for the tidelands I assume that the owner could sell, could own and sell that land or use it himself. The rental value would be absolutely under the domination of the ownership.

Q. Assume, for the purpose of this question, that under the law of California tidelands can not be owned in private ownership. Assume that to be the law. Would you then say that the value of those tidelands in California was $4,000 an acre?

Mr. DUNNE. One moment. I object to the question as without foundation and as assuming matter which is incompetent, to wit, that under the law of California tidelands are not susceptible of being held in private ownership.

The COURT. I think, Mr. Denis, the objection will have to be sustained.

Mr. DENIS. Q. Well, assuming that the tidelands connected with North Island were subject to the restrictions that all tidelands are subjected to under the law of California, will you still say that the value of those tidelands subject to those restrictions was $4,000 an acre?

A. I arrived at my valuation by comparison with tideland sales that I know that have been made on the Bay of San Diego.

Mr. DENIS. I move that that answer be stricken out, and
122 that the witness be required to answer the question.

The COURT. The answer will be stricken out; the question calls for a yes or no answer.

Mr. DUNNE. One moment. I have two objections to that question: First, that it is incompetent and without foundation, because it assumes an attribution and a limitation in respect to these tidelands, which is not justified. I object to it, in the second place, because it calls upon this witness to pronounce, before he can answer the question, upon the legal limitations and restrictions upon tideland ownership.

The COURT. There are many questions involved as to what the rights of riparian owners are in tidelands, and depending upon lots of facts and circumstances. I think the question calls for so many phases of the proposition that it would be useless to ask the witness's opinion about it. The law in relation to the right to flood this particular land might be stated to the witness, or the right to occupy it, if held in private ownership, and then call for his opinion, or the law might be stated relative to these subaqueous lands, if it is held in

private ownership by the Coronado Beach Company, might be stated and the witness's opinion secured; but without stating that law we don't know what the witness may have in mind concerning the right to wharf out, or the right to reclaim, or anything else.

The WITNESS. The tidelands to which I have given a value of $4,000 are immediately in front of the bay there [pointing to map]. I put three values, from $2,000 to $4,000, on the tidelands, as its importance to me seemed fair and equable. I estimated the lands up there next to Port Pio Pico at $2,000 an acre [indicating on map]. This I put in at less value, this section next less, and I put this at $4,000 an acre, in my opinion. I appraised 93 acres in the neighborhood of Whalers Bight at $2,000 an acre—no, it was 94.45
123 acres. I appraised 122.83 acres at $3,000 per acre. That is immediately adjoining the Whalers Bight section in here [indicating], up to this section right here [pointing to the apex of that side of the survey line]. Where these tidelands extend out into the channel, making, on that map there [indicating], the entrance to this inner section here, and containing 122-odd acres. And the remainder, 436.50 acres, at $4,000. The total valuation I put upon the 663 and a fraction acres is $2,303,390. The total aggregate of my appraisement for upland—the land above the high-water mark—is $4,315,255. That is $3,500 an acre for 1,232.92 acres. This is in combination of the use of North Island for both commercial and residence purposes. My valuation of that upland, or mesa land, would be higher than that if we removed the commercial development of the water front. I think it takes from the value of the residence section, from the uplands, by having a commercial front there. My subdivision experience has all been by associations, not myself individually. We have put on six or seven subdivisions, some out in East San Diego and some on Point Loma. The extent of the aggregate of the subdivisions that I conducted in acres is about 250 or 300 acres. I helped to lay it out; helped devise the way of laying it out; helped price it; and helped decide on the improvements. In my figuring I did not especially consider that Coronado was a subdivision of improved property. I knew Coronado, as such, was somewhere in the vicinity of 600 acres or thereabouts. I knew it had been subdivided more than thirty years ago. I don't know that approximately 40 per cent of that subdivision is still in the ownership of the Coronado Beach Company; I know it still has holdings there; I don't know to what extent. I know there is property for sale in Coronado, the same as in San Diego. I couldn't tell you whether there has been much or
124 little selling of Coronado lots up to this time from August 1, 1917. The upland of North Island would, of course, have to be divided up into building sites to be available at the price I put upon it of $3,500 an acre. Before we put a selling price on North Island for a subdivision we would have to go into all of the different expenses and costs relative to the island before we could reasonably

hope to market it, and that would be the basis of the selling price. In making the estimate that I have testified to here I did not go into all of the expenses necessary to subdivide this property and put it on the market. I did not consider the question of the water supply to furnish the 1,200-acre tract with water, because I think there is no question but what they could get water from San Diego. I know the approximate use of water *use of water* in San Diego to-day, also the approximate reserve we have in storage for San Diego. I considered in that estimate that this body of land is twice as large as the subdivision of Coronado, so called. I did not consider at all that there was a portion of the subdivision of Coronado still unsold after thirty years of its being on the market. I did not consider the cost of sewers, lights, streets, and other necessary improvements for a high-class subdivision, because all of that would come in after we had fixed the approximate selling price, as to how much of an investment we would want to put in other than the purchase of the land. I did not consider the cost of sewers, the cost of lights, the cost of streets, the cost of planting trees and vegetation and lawns; I did not consider any of those things, because I got at it in this way: Taking the best of the residence section of San Diego, which has no restrictions, based on the selling price of lots in that district—no matter what price we would put on the lots in North Island, as compared with the selling prices in the better districts of San Diego, it would be perfectly safe on account of the environ-
125 ments and improvements. Therefore my estimate does not include the prospective price, absolutely not, because I know that price is low as to what it could be subdivided and sold for; that is, in my judgment. The largest body of land that I have been instrumental or an agent in the purchase of for high-class residence purposes is about 20 acres at Point Loma. I can not name any sale during the period of my residence in San Diego of a body of land of twelve hundred and odd acres at $3,500 an acre. In arriving at the value of seven million dollars, approximately, I did not consider at all the length of time it would take the purchaser to dispose of that body of land. That would depend, of course, upon the ability of the seller, of the selling agency, and how they went at it, and who they submitted it to. I did not fix in my mind how many years it would take to do the work of improvement and put the lots on the market and dispose of them. I didn't go into it that far. I would estimate that the gradual increase of the value of the property would take care of the increased cost by reason of the interest charge. There should not be any question of purchasers within a reasonable time for that entire body of land. There is nothing like it that I know of for sale.

Redirect examination by Mr. DUNNE:

I did not know about the 600 acres in Coronado some 30 years ago—that they sold for $2,800,000, or that part of it sold for that. I am not familiar with that.

126 JOHN D. SPRECKELS, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

I have lived in San Diego on and off for a period of thirty-three years. It was not a continuous residence, however. During that time I have been engaged in business in San Diego. I know the property, North Island, very well. I am familiar with real estate values and tideland values in the bay district of San Diego. I am the president of the Coronado Beach Company, the defendant in this case. North Island is adaptable to a great many purposes. The property is adaptable for residential purposes on account of the location, being surrounded by the ocean and the bay, and from the climatic conditions prevailing there, and the protection afforded by the high lands at Point Loma. The climatic conditions are more favorable in North Island than in the South Island, on account of its closer proximity to the headlands of Point Loma. North Island can be adapted for any purposes, as far as residential purposes go; for all classes of residences. In a community you have to have all sorts of residences, for the poor, for the artizans, for the storekeepers, and then also for the men in better circumstances, who want villa lots instead of small lots. That land is adapted in every way for villa lots or villa sites. They would be placed wherever the people desired to locate. Some prefer the ocean side, and some want to get away from the ocean. North Island is equally as accessible to San Diego as South Island, excepting probably you could reach the residences in a little less time, probably not to exceed five minutes.

127 North Island is adaptable to access to South Island in two ways. One is by the strand connecting the North and South Islands on the ocean side, and then by causeway or bridge across Spanish Bight, and that was contemplated in the plans that I have evolved for the island. That strand has been used for both land transit and rail transit. They operated a railroad across that strand when we supplied the rock from Sweetwater for the jetty now projecting 1,200 feet out seaward from the point of North Island. I am familiar with the 663.3 acres of tidelands on the northwesterly coast that you have been speaking of here. They are commercially adaptable by dredging out, dredging out the shoal-water part of the island, the title running out to ship channel to deep water. That could be dredged and the waters established in there, and then it would not be subject to the tolls and wharfages as levied by the State for wharves. That property is practically a railroad terminal now. I refer to the San Diego & Arizona, which operates to Yuma, and it connects with the Southern Pacific to El Paso, and from El Paso by Rock Island and El Paso Southwestern to Chicago. The road—the San Diego & Arizona Railroad—was not completed and started operating until the 1st of December, 1917. On the 1st of August, 1917, the road had been completed to some point beyond Campo. I think

possibly up to as far as High Pass. It was on the 1st of August, 1917, in course of construction towards its completion between termini. The unity and intactness of ownership, in my judgment, of North Island as a whole, most decidedly enters as a factor in the value of the property; from the fact that I had numerous offers from eastern people——

Mr. DUNNE. Q. Now, I will ask you in view of all the adaptabilities to which that property could be put, as of the first of August, 1917, what, in your judgment, was its fair market value as a whole upon that date?

A. I valued the land between seven and eight million dollars.

128 Cross-examination by Mr. LAWSON:

I think it was in 1888, that I became indentified with the Coronado project. I have been identified with that project ever since that time, and the one most vitally interested in it financially. I first noticed and appreciated the superior climatic conditions on North Island with reference to South Island shortly after my arrival here in 1887. I have always been aware of the fact that the climatic conditions on North Island are better than the climatic conditions surrounding South Island. I always considered North Island as the cream of my investment in San Diego, and the most valuable. With reference to 1888 and the 1st of August, 1917, considerable money has been invested in Coronado Beach, in the way of improvements and so forth. When I became identified with the Coronado Beach Company it began to prosper. I was the man behind it. I am the man who was responsible for its development. I was the man who saw that the finances were there to develop it; except that I did not do much developing in North Island at that time. Most of the month that went in was my money—not alone my money expended in the development of Coronado and South Island, but also largely in San Diego, because one would reflect upon the values of the other. And for that reason I engaged in the development of San Diego, and especially in the building of the San Diego & Arizona Road. I could figure out and visualize what that meant to San Diego and meant to Coronado. Up to August 1, 1917, I hadn't done anything at all towards developing North Island, excepting I had it surveyed, staked out, and platted for residences. That was done several years ago—before 1917. I planted trees there, getting it ready to put on the market. Nothing else was done towards developing North Island besides what I have just mentioned.

129 Up to August 1, 1917, it wasn't the time for me to develop North Island. I had to wait on other things—on other matters. I did not think in the beginning to do otherwise than to dispose of North Island for residential purposes, but when I saw and learned by reading the papers, and the action that was taken here in regard to city-front property, which is almost taken up—75 per cent of it—I realized that it was one of the mistakes that was made here, because the time was coming when we would want big

enterprises here and we have got no place to put them. North Island can be made a good railroad terminal. A railroad terminal on North Island would develop the trade at this port here, and that trade is going to continue developing right along. I look for a big trade here on account of its proximity to the Panama Canal. The ships are coming here and the freight which ordinarily, and which in the past has come all the way from the East to the West, will now come through the Panama Canal on account of its cheaper operation of ships and railroads, and will land its freight in this port, and then will be shipped eastward to points where it meets competing rates from the East; and we figured we can go as far East as up to the western end of Texas; and then there are other reasons. We have a large valley right close at hand—one of the most productive valleys in the world. The shipping of products, especially cotton, will take place and go to the Orient—not alone the cotton from Imperial, but from Texas. Shipments of cotton have been made many years ago from New Orleans here, and then by ship went to China and Japan. Those reasons all apply equally to the entire San Diego Basin or harbor. Those same reasons would apply to San Diego proper, as well as to North Island, but for the reasons that I have stated before, there is so much of the water front that has been let out in small parcels, and the Government has taken a large area, that you have not got room enough to put the ships that
130 are likely to come into this port. I predicate the reason for selecting North Island solely then upon the necessity, that is, the lack of accommodations on the San Diego side. The advantages at North Island are that it has got location, and things can be built—wharves can be built—where you could not put them in San Diego, for the reasons that I have stated, that so much of the water front has been already consumed. I think about 75 per cent of the water front is gone on the San Diego side. I merely predicate that upon necessity; that is, the lack of accommodations in San Diego; there would be that necessity arise. I won't admit that in the handling of freight there would be a disadvantage on the North Island side rather than on the San Diego side. There will be no difference in the handling of it. I appreciate the fact that every time a piece of freight is handled it adds to the expense; but there will be no additional expense because car and ship will meet there together, and it is simply taking it out of the ship and putting it on the car and sending the car on its way, so there will be no additional handling; handling in such manner as that proposed in using modern methods in handling freight, as against the methods that are in vogue here in San Diego. I can handle it cheaper than they put it on this side. I do not limit the commercial purposes of North Island solely to that of distribution. It is capable of a good many other things. A place where trains and boats meet and exchange commodities and go their separate ways; that is one thing. You can have dry docks in there, you can have ship yards, you can have factory sites, and warehouses, and taking the freight from the ships right into the

storehouses. In fact it can be made a free port. I contemplate only one portion of the island being devoted to industrial purposes. I think that the island could appeal to those seeking a high-class residence, and at the same time foster all those various and numer-

131 our commercial projects that I have mentioned. I do not think one would destroy the other at all. That I know from my experience in San Francisco. I lived in one of the residence districts in San Francisco, on Pacific Avenue, one of the principal residence districts in the city of San Francisco. On account of its view of the bay and of the harbor it lends itself to residences. Below that we have factories there, and it has not interfered with the growth of San Francisco or the development of that street. And that not alone applies to Pacific Avenue but also to Broadway and Vallejo Streets. And I think that, within that comparatively limited area, the island could harbor both these various industries and other commercial projects and I have mentioned, and also high-class residences. It is contemplated to put those on the submerged lands—the harbor. and have an inner harbor—a harbor within a harbor, so to speak. When I arrived at the opinion that I have just expressed, as to the value of North Island, I did not at that time, and do not now, know the assessed value of North Island. I have known, but I have forgotten. I have people who look after those things. I have a man who does nothing but look after the taxes. I did not have any idea as to the assessed valuation when I arrived at my opinion. I would not want to make a statement that I can not verify. Naturally, I was interested in the case and talked with the experts who were going to testify. I didn't discuss the question you just put to me in regard to the amount of taxes paid on the assessed valuation of it. I have not discussed all the other phases in reference to this case, particularly—I may have mentioned—the most I have heard is what was produced in court here.

132 PAUL I. WELLES, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

My business, or profession, is expert land appraiser. I was educated at Yale College. I am a graduate of Yale University. The first part of my business life was connected with the railway service in various parts of the country. For seven years I was with the Union Pacific and Great Northern, in charge of construction and operation work, where we had a good deal of railway terminal experience. I followed that by two years as superintendent of the Long Island Railway, and around New York Harbor, where we had to do with the beach business, Rockaway Beach and Coney Island and Manhattan, and with the various freight facilities at Brooklyn Long Island terminals and Manhattan terminals. And then for nine years I was in the Southern States, the South Atlantic States, in charge of the Southern Railway, in South Carolina, North Carolina, Georgia, and Florida, where I was manager of the terminals

at Jacksonville, Florida; at Savannah, Georgia; and at Augusta, which is a port on the Savannah River; and there became acquainted with southern conditions both as to freight terminals and water fronts and the various beaches along the south Atlantic. After that I went into the general contracting business, what we call heavy contracting, railway construction, and the like; and with the Erie Railway; had a very intimate knowledge of conditions in Jersey, Hackensack Meadows, and Newark, the development there of the tidelands into their completed and improved condition. And then I went into contracting for the Government of the United States on breakwater work. I built a part of the breakwater off the city of Cleveland, and while there we got our rock from Johnson
133 Island, off Sandusky, about 75 miles distant, and had a fleet of boats, and I had to do with the lake ports Lorain, Cleveland, Buffalo, and Sandusky. I also built a portion of the United States breakwater off Rockport, Massachusetts, and had to do somewhat with Boston Harbor, particularly Gloucester Harbor. Then I came into California and did some work for the State of California and for the city of San Francisco—a good deal for the city of San Francisco and for other municipalities, and for railways—conduits, railroad tunnels, trestles, pretty much everything that comes into the experience of a general contractor. And in that capacity I acquired a very fair knowledge of water-front conditions of all kinds in San Francisco Bay. Then I went to the Southern Pacific Railway Company, or the Southern Pacific Company, in the valuation department, as chief land appraiser, and for seven years had charge of the appraisal of all of their lands from El Paso to Portland, and from San Francisco to Ogden. This was a work performed in connection and cooperation with the valuation bureau of the Interstate Commerce Commission, in their Federal valuation of railways; and we pursued the same lines of development and the same methods of valuing and appraising lands, which, briefly, was to determine the value of similar adjoining, adjacent lands, privately owned or otherwise, than by the carrier in question, and reflect that value, making allowance for changed conditions to the best of our judgment. In the course of my work as an appraiser and in collaboration with the Interstate Commerce Commission I became acquainted with the value of tidal lands up and down the Pacific coast at various ports, including the port of San Diego. That was a part of our business—Portland, the northern ports, San Francisco Bay, San Pedro, and Long Beach, Santa Barbara, Santa Cruz, Monterey, and we had some property here that I had to look after also. I am familiar
134 with real estate values and tideland values at the ports on the Pacific coast, including San Diego; that was my sole business for seven years. I am familiar with North Island. On August 1, 1917, it was adaptable to both residential and commercial uses. There are many reasons that make it particularly suited for residential purposes. The first one that is evident to us all is climate

conditions. It is sheltered by the promontory of Point Loma from the prevailing winds and fogs. The fact that it has a water front of nearly the entire distance around it, of six and a half miles, of which a portion is on the ocean, with as good a beach, perhaps, as there is to be found on the Pacific Ocean. The fact that the property, at least 60 per cent of it, may be termed marine-site property, as distinguished from interior, so that a man would say he was living on the ocean or the beach front, the bay front. A large part of it is suited for very high-class homes, perhaps the highest of any to be found in the land. The fact that it is on this harbor, which for residential purposes, has no equal on the Pacific coast, with its sheltered condition and its climate. The fact that it has a population of nearly 100,000 people around it; that it is neighbor to the present town of Coronado and to San Diego, and is a borough of the whole district, you might say, the same as Brooklyn is a borough of New York—of Greater New York. It really is not distinguishable from these other portions of the bay in respect to population. Take Berkeley and Oakland; they run together; you can't tell the difference unless you have a map; and there is a mere separation by a strand of North Island from Coronado. It being under one ownership, it is susceptible and is adapted to very modern development; it lends itself to a high-class of restriction. I was at Los Angeles Sunday, and we drove through the restricted districts, and some that were not restricted, and the difference is marvelous, what restriction will do in enhancing the value of property. Without
135 restrictions you do not know who your neighbors are going to be, and you don't know what you are going to have, whether African or coolie. It topographically has a gentle slope from near the center to the water front, which is sufficient for storm drainage. The character of the soil is such that it is easily put into landscape and garden effects, or it has a good foundation for structures, being a sort of a sandy loam, partly alluvial deposit and partly from the sea. Its shape is such that there is practically no waste. I don't think in the whole development I found more than something like 15 acres of waste project that I had to throw away in analyzing the land as it is to-day. In respect to its adaptability for residential purposes, the tidal lands have a relation from that point of view. I concur with the views I have heard expressed here by other witnesses, some of them local people, that if the island and the tidal lands are put to two uses, or more than one use, undoubtedly we will not get as an average of value for the residential portion per acre or per unit as if we sacrifice the industrial value of the tidal lands and use them as an adjunct, you might say, as a bonus or adjunct to the residential. I regard the tidelands as a very great addition to the use of the land. It gives one a water garden, so to speak, in his back yard. Instead of jumping right out into the ship canal the shore gives him a beach coast; and the meadow lands of the Spanish Bight and the Whalers Bight give him a play ground for his children and can be filled for residential purposes. These tidal

lands lay for the most part between the bulkhead and pierhead lines, there being only 40.6 acres adjoining the bluff that is above mean high water. The slope to the bay there is very gradual. It goes down, perhaps, an average of not over five feet for the entire 2,000 feet in width. Because the bottom of the bay suddenly chops off into the ship channel, that land and water, with a little dredging,
136 would be made a suitable harbor and speedway for motor craft and yachts and various water things of that kind. The rest of it, if desired, can be turned into lagoons and islands and canals, or whatever appealed to the fancy of the architect or landscape engineer in charge. It would give the city of North Coronado a wonderful front or back door, whichever you might term it, front or back yard. I would, perhaps, term it a front yard instead of a back yard, and that value is undoubtedly a substantial one when reflected for purely residential purposes. In regard to the availability of the tidelands for commercial purposes, first of all, it is of sufficient magnitude, being about 2,000 feet in width, to develop by itself, regardless of the balance of the Bay of San Diego. It is a unit. You could have there, as one of these maps shows, in one of the forms of utility uses—you could have a tidal basin where ships could moor, could handle themselves without the aid of pilots or tugs; they could dock. It is big enough for a full development. Second, it has wonderful adjoining water-front land, as the map shows, and as you know—as we all know. That soil is uniformly nearly level, no breaks in it, no canyons, no ravines, no arroyos. Third, the character of the substrata on this tidal basin, this tidal prism, this tidal flats, is known by a test that has been made and that I am aware of—is known to be such that it can be very economically drained, perhaps more so than any other part of the Bay of San Diego. And then it is close to the port entrance; it is close to the ship channel; it is at the ship channel; there is no intervening body of mud flats, like we have across La Playa and over at the Marine Base, and over in front of most all of San Diego. Ballast Point would be the geographical point at the entrance of San Diego Harbor. North Island is just across the channel there at the narrows. North Island Harbor would be the proximate harbor
137 for ships entering San Diego Bay. I am familiar with the physical configuration of the Golden Gate, in San Francisco Bay. The line of the Golden Gate corresponds analogously to a line from Ballast Point to North Island. And as between San Francisco on one side and on the other side of the channel, Berkeley and Alameda, North Island would correspond in point of topical relation to San Francisco. North Island lends itself most favorably to what we call a modern water-front development. That is, first, you have the channel and the tidal basin. Second, protected, convenient, no expense for dredging in the fairway at all. The Government would keep that up at its own expense, which is not what we do elsewhere, at Alameda, and so on. Third, you have these piers extending out about a thousand feet, and between them what we call the docks,

which is simply where you dredge the dirt out, and at the bulkhead line you have a street or highway, called the Embarcadero, with railroad tracks and vehicular pavement. And then, against the bluff, which rises about 12 feet perpendicularly above the bay shore, you would put your warehouses. On your piers you would put the transit sheds, as we term them, which are not meant to store freight, but as a convenient place to move it from rail to water or the reverse. Back of these warehouses, with their main floors the level of the transit sheds, and the second floors on the level of the great level of the island, or the mesa, you would have other storehouses, and industrial lofts and commercial centers, such as Los Angeles has been so successful with the last two or three years, and perhaps some day, more modern ideas yet, but these things are those that are imminent and in demand and pressing all over the coast. As a railroad terminal—it is necessary to have certain railroad facilities, breaking-up yards, and making-up yards, where any large amount of water-front business is conducted; and the main thing in a railroad terminal are the conveniences of the location and the room, and the unity of
138 the land, and the continuity, having it all in one parcel. You can get flat land almost anywhere, and you can put a railroad most anywhere, but the point is your railroad terminal must be economically well placed. Here, therefore, you would be bound to have a terminal in connection with your other work. It is a necessary feature of it, and I would place that terminal as the maker of that map has done, convenient to the ferry slips, the freight slip there, as shown, where there is forty feet of water right off of it, and convenient to the industrial section, the water-front section, and the piers and docks. I was engaged for seven years in the Federal-valuation work of the railways. In my opinion, as of the first of August, 1917, and having regard to all the adaptabilities to which North Island could be put, its fair market value as of that date was $7,300,000. In my judgment the value of the tidelands, the 663.3 acres, as of August, 1917, was $4,000 an acre for commercial purposes. In my judgment the value of these 1,200 acres of mesa land, apart from the commercial aspect of the tidelands, and assuming that the defendant did not own the 663 acres of tidelands, would be $5,000.00 an acre as of the first of August, 1917.

Cross-examination by Mr. LAWSON:

I have never been engaged in developing any subdivision. As a practical real estate man, I have had nothing to do with the development of subdivisions. I have been engaged in the valuation of land. I have bought and sold land for my own purposes and for others—quite a good many thousand dollars. I would have to figure it up. The purchases have been mostly tideland propositions. I bought properties, not for subdivision; that has not been my work; my work has been valuation. The largest purchase I ever made of tidelands was perhaps $40,000 at a time. It runs as high as 40 cents a square foot, under 20 or 30 feet of water. We

don't buy it by acres, we buy that by square feet. It would be $25,000 an acre at the rate that we pay, from there down to perhaps $14,000 or $12,000. As a matter of fact we are getting together a good many segregated parcels to make a whole for tidal development, and we buy these segregated parcels in order that we may acquire the whole. These parcels are in lots, and they run about 7,500 square feet to the lot, which at 40 cents will give you, as you see, $3,000 a lot. We pay from 40 cents to 30, and when I can get it cheap enough, down as low as 10 or 15. By "we" I mean an association of gentlemen. Mr. T. P. Andrews is one of the main gentlemen. We have offices, 403–4 Chronicle Building, San Francisco. We are engaged in the real estate business, or the buying of tidelands and selling them. I have appraised the value of the tidelands at North Island at $4,000 an acre for commercial purposes. One of the reasons is that the basin could be economically dredged and the general condition of the basin and of the tidelands would make it easy of development. That is not the principal reason. There are many other reasons that I would be glad to tell you if you wish to hear them. North Island—the port of San Diego—is nearer geographically, 100 to 225 miles, to the great circle of navigation between the Isthmus of Panama, Honolulu, Yokahama, and Hongkong. That is, nearer to all the United States south of the line below the latitude of New York and Pittsburgh than any of our northern ports, thus embracing a large percentage of the commercial business of the United States. It is on the short line of travel of business from the back countries of New Mexico, part of old Mexico, Imperial Valley—the great irrigation areas that are being developed now. It has this new railroad, or had in 1917, as an accomplished fact, nearly; the new railroad backed by very powerful interests, and was really the only Pacific seaport the Rock Island System had, or will have, or has to-day. The Phelps-Dodge people are also behind it, one of the most powerful concerns financially that we have in the country. They are going to give this port what it has never had before—a chance. They are bound to, because they have nowhere else—to date. They have been on the shoestring of the Santa Fe System here before. I regard as perhaps the greatest factor, at least, a very great factor, in answer to your question, the transcontinental railway and its accessibility to this island. It is on the low altitude line of the air railways, if you want to term it so, between the East and the West, the line through the Southern States and Texas being for most of the areas usable, as against the storms of the Sierras and Rockies of the North. With regard to this port itself, this island is directly on the ship channel, which is more than you can say of the water-front lands in the rest of the port. You haven't any rest of the port, hardly. You have given away a large part of it to the Government of the United States, at least, a large part. You have cut the rest of it up into isolated fragments here and there. You are, in fact, held down by your State law, which prevents you

from leasing them more than a certain period of years, and more than that, which gives them the right to terminate the lease at the option of the city on an appraisal of the property. No man is going to put great improvements on any such kind of lease as that. So that it has a great advantage over the mainland for any large interests coming. None of your water-front land over there is open and free to the pierhead line or to the commerce of the bay. It has got to pass over the mud flats belonging to the city for the most part. The shape and size of those mud flats are against economical development. The foundation, as shown by your new city pier that you are building, the test pits, and all that—the
141 test borings—indicate rather a treacherous character of subsoil, quicksand. You had the same character of trouble when you built your present one. They had the same trouble when they built the Marine Base. We do not have that kind of trouble on North Island. We can build our docks cheaper. We can put them on a more firm foundation and they will stay over night. There is no silting in this inner harbor we have laid out for you. You have two or three rivers emptying into the bay here. You used to have the San Diego River, which silted you up a little, but in the upper part of the bay you always had to do some dredging. That would be an item of expense to whoever is on the water front down there. You have freedom of development in this private ownership for water-front purposes that you do not possess on the city water front. You have back land there a mile and a half deep that you can run in all sorts of industries, and the average industry on the water front takes in from fifteen to eighteen hundred feet in depth, as shown on the Pacific coast. That is a matter of fact that we have investigated. You have the advantage of a deep-line water front to work upon. You can not find a piece of deep ground on the other side unless you go over to National City, where you have the advantage of a depth of water front. You run into the city streets, the Santa Fe Railroad, and all that right away. It seems to me that it is hardly comparable when you analyze all those commercial conditions. It is so much better than anything else that you have left in the harbor. I don't know whether that answers your question. I think it would be a disadvantage to San Diego for the Government to take over North Island for an aviation field—from a commercial standpoint. For commercial purposes I should be sorry to see the Government take it. We have the same trouble there in San Francisco. We are opposed to the Government taking Hunters Point for the same reason. The Government killed part of
142 San Francisco with the Presidio, and also Monterey with the Presidio.

LOUIS H. MOOSER, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. DUNNE:

I am in the real estate business in San Francisco, and have been for sixteen years. I am the president of the San Francisco realty

board. I am also the United States surveyor general for California. In the course of my business experience I have come in touch with tidelands, water front lands, their value and their adaptabilities for uses residential and commercial. The largest tract of land that I have had experience with in that regard was the Islais Creek—the litigation between the State of California and the owners of that tract of land—consisting of 93 square blocks of submerged land on the water front of San Francisco. The next largest tract similar was that tract occupied by the Panama Pacific Exposition, consisting of 663 acres of submerged land on the water front of the northern part of San Francisco. And I acted as arbitrator representing the city of San Francisco in the arbitration of the exchange of lands between the Southern Pacific Company on what is known as Channel Street, in San Francisco, for the lands lying at the foot of Van Ness Avenue, submerged. I also appraised for the United States Government all of the lands surrounding Hunters Point for naval base purposes, consisting of over a thousand acres of submerged lands surrounding Hunter's Point. I also appraised for the
143 owners of lands on the Marin County shore for naval base purposes, and am familiar with tidelands, submerged lands, and water front lands generally. In the exchange between the city and the Southern Pacific Company the city took the tidelands on the Bay of San Francisco, on the northerly shore and east of Black Point. There were in that area six blocks, 275 feet by 412½, and the streets. It is being now developed as an aquatic park. The exposition lands extended from Van Ness Avenue on the east to Baker Street on the west, and from Chestnut Street on the bay, running north and south out into the bay, an area, as I say, of approximately 660 odd acres. After the exposition was over—this land is owned by hundreds of separate owners—they held a meeting for the purpose of determining what best use the land could be put to. I am familiar with real estate and tideland values in the Bay of San Francisco. I was first on North Island when they were building the Hotel Del Coronado, something over thirty years ago. That tract of land is adaptable to residential, commercial, industrial, railroad terminals purposes. It is adaptable for residential purposes due to its location, its climatic conditions, its nearness to surrounding populated territory, and in many respects it is ideal. It is adaptable commercially principally because of its water front facilities. It has its own water front. It is ideal in that respect. I know of but very few other pieces of property located on the water front in the State of California where the individual title goes out to the pierhead line. It is easily adaptable to the purpose of a railroad terminal, and its main industrial value comes from the fact that water and rail are brought together. In my judgment, the fair market value of that property, as of the 1st of August, 1917, in view of all the adaptabilities to which it could be put, was seven million dollars. I put the square foot value of the 663.3 acres of tidelands

144 down at nine cents. I believe that makes $3,920 an acre. I would place two different values on the mesa lands. If the entire island were used exclusively residentially and the water front made use of for an aquatic park, bathing establishments, and establishments of that character, in order to enhance the value of the residential land, I would put the value of the residential land as high as $5,000 an acre. But I am of the opinion that it would not carry as high a value residentially if it were developed commercially and industrially; and I would put it as low as $3,500 an acre. In measuring the value residentially at $3,500 an acre I would take into consideration also that the tidal lands would have the appreciation resulting from their commercial use.

Cross-examination by *Mr.* LAWSON:

In case the upland was devoted to residences, I don't think that would affect the value of the tidelands at all. I think there is enough territory there to develop the industrial part without its being affected by the residential. The mesa land in itself is sufficient for residential purposes, and so is the industrial part—the lower land, the water front land. There is plenty of it there to develop that without its being affected—the commercial value of the tidelands would not be affected, because you would not be inclined to run a high class residential land down to the commercial. When I speak of using the island for industrial purposes, I don't mean the whole island. The kind of industries I would select for the island would be—well, lumber yards, manufacturing industries, warehouses, and commercial industries of all kinds that are usually found on water fronts. I would allow six hundred odd acres which is naturally laid out for commercial and industrial
145 purposes—I would allow that for the industrial part of the island. And, of course, in order to support such industries there would necessarily have to be the labor to run them. I calculated upon that; that is the way I would make the difference. I made provision for their habitation on the island. There would be a zone between the industrial zone and the high class residential zone for a bungalow district—there would be a strip there approximating 480 acres. I would zone out for such purposes that portion adjoining the industrial part, a strip between the industrial part and the center of the island up this way [pointing to the south]. In making my estimate of the residential value of the island, and figuring it at $3,500, I included the 480 acres; I have taken all into consideration. I charge that all at $3,500. That is why I reduced it to $3,500, taking all the uses into consideration; the high residential and the low residential, taking them all into consideration, I have taken the figure of $3,500. I appraise the 480 acres in that zone, the land in its raw state, at $3,500 an acre. I first arrived at my opinion in this case as to the value of that land on last Monday morning. I first took up the matter with regard to the investigation of the island within the last two weeks. I don't know that I have been subpœnaed at all in this case. I was

notified to be here as a witness within the last two weeks. In making up that opinion I have projected myself backward to August 1, 1917, and visualized the conditions then. I was all over the island in 1914. When I arrived at my opinion I thought in concepts of August 1, 1917, giving due consideration to the market at that time. It is my opinion that on the prevailing market of August 1, 1917, that I would attach a value of $5,000 per acre to the raw land on North Island, for residential purposes, if it were developed for high class re-
146 stricted residential purposes. If the land would be developed, it would be worth that. I did not attach a value of $5,000 an acre. I say if it were developed as a high class residential and restricted tract, the upper portion of it would be worth $5,000 an acre, but I haven't placed that value upon it. That would not be dependent upon these developments that I have just mentioned; that is taking into consideration only the condition of the property in 1917. But I have not used $5,000. I haven't mentioned $5,000; $3,500 was my figure, bearing in mind the entire uses for which the property can be adapted to. I did say that the high portion of that land would be worth $5,000 an acre for purely residential purposes. At the time that I arrived at my opinion, I did not have in mind that it would be worth that much if those improvements were put into the island. It would be worth a great deal more than that if it were all developed. If streets, sewers, and all the accessories were put in, it would be worth more than that. I am treating the land as I find it. I would not advise anybody to buy that land if there was not contemplated some development on the land, at $5,000 an acre or any other price. I would not advise anybody to buy a piece of property if I could not see that it was adaptable to some use—some good use, and worth the value attached, I wouldn't advise them to buy it. I would not buy it at $5,000 an acre unless I knew it was going to be developed. I would not advise anybody to buy it unless I thought it was going to be developed—unless I thought it could be developed. When I arrived at my opinion I had in mind everything that the property could be adapted to. I took everything into consideration when I came to a conclusion of value. You can't nail me down to any particular use to which the property could be put, because I am taking all the uses to which the property is adapted into consideration when I arrived at the value. I myself would
147 not put $5,000 an acre into that land unless I knew it was going to be improved. I certainly did have that in mind at that time. I had in mind that the island would be paved, and that the streets would be lighted, and sewers would be put in and curbing and sidewalks and so forth. I could see that picture. That is part of a real estate man's business. That is part of my business, to visualize a project which is in the future, and picturize. There would not be any city of San Diego if there wasn't real estate men to see in advance. I saw that vision; and in that vision I saw all these improvements on the island. And therefore, in view of all the con-

templated improvements that would be put into it, I arrived at the opinion of $5,000 an acre.

Mr. LAWSON. I make a motion at this time, your honor, to strike out the testimony of this witness in regard to that phase of his direct testimony, that he attached a value of $5,000 an acre to the land for residential purposes.

Mr. DUNNE. It is very evident that the witness has testified to the adaptability as is for residential purposes and has said that its value as a residential district would be very much more than $5,000 an acre if it were improved.

The COURT. I think the witness' testimony as it stands now is very questionable. The cross-examination has certainly thrown doubt upon the admissibility and relevancy of his testimony.

Q. You have testified concerning the value of this land as of August 1st, 1917. Upon what did you base your opinion concerning the value of this land?

A. Upon the value of similar lands, similarly located, that I am familiar with throughout the State.

Q. Well, what particular things did you take into consideration in giving that value, that estimated value?

A. The use to which the property can be adapted for residential purposes, for industrial purposes, for terminals, taking
148 all things into consideration.

Q. Well, were you in doing that considering its market value, or what value might be produced by spending a lot of money on it in doing these things?

A. No; its market value as is.

Q. The market value that existed on August 1st, 1917?

A. 1917, August 1st.

Q. You did not take into consideration the fact that the whole character of the property would be changed by spending a lot of capital or a lot of money upon the land?

A. Well, as I have answered before, I could visualize that. I can see what can be done with a piece of property when I look at it.

Q. Well, in making up the amount that you stated the property was worth, did you take into consideration what might result from these improvements, capital investments, and division into lots, and building of piers and the receipts of money that might result from such investment, or did you really consider now the market value of the property, what it might be sold for under certain conditions, with proper puffing, and so forth?

A. I considered what it might be sold for, bearing in mind the many uses to which it could be put. Those things—a real estate man, whenever he makes an appraisement, and that is my specialty; I have been appraising lands for the last 15 years, doing that almost exclusively; I don't think there is anybody in San Francisco that has appraised any more than I have. I have always made a mental picture of what could be done with vacant land when appraising.

Q. Well, your opinion is that the value you have given would be a just compensation for that land as of August 1st, 1917?

A. Yes, sir. I realize how difficult it is for a witness to
149 give testimony as to the method that he exercises in arriving at a conclusion. If I were talking to you in an office I could talk differently than I do here, and I could point out to you the method that I use in arriving at my conclusion. But we are so hampered by law when on the witness stand that it is extremely difficult to make it clear. And I don't want to appear here as simply testifying to a figure because that figure happens to be close to what somebody else has used. I am using my judgment as a real estate expert, and have arrived at these figures from the known methods of real estate men in arriving at the values of property. I would like to be able to point out my methods and my comparisons and the reasons that I have adopted for arriving at this figure. I might say—and I don't want it put down if it is out of order—that if there is any other piece of property in the State of California, water front property, located as this is that can be purchased for 9 cents a square foot, I don't know where it is.

Redirect examination by Mr. DUNNE:

Q. Mr. Mooser, in putting your valuation of so much an acre on this property as of 1917, if I understand you, you did not figure on how much money would have to be put in for improvements, and then what the property could be sold for?

Mr. LAWSON. Just a moment. I object to that. I object to the form of the question as purely leading, which is not permissible on direct examination.

Mr. DUNNE. I beg your pardon. I want to ascertain if he proceeded upon a speculative method, your honor.

The COURT. I think the question is proper. Read it, Mr. Reporter. There was an interruption there. Let's see what it is [question read].

150 Mr. LAWSON. I think, your honor, that is purely a leading question. Of course, if that is not a proper objection, I apologize, but it seems to me that this witness belongs to the other side, and this is not more than redirect examination, which does not throw down the bars and give him the full scope of a cross-examiner, and that is purely a leading question. It seems to me the question should be calling for the conclusion of this witness without putting the ideas or stating the ideas first before he, the witness, arrives at his conclusion.

Mr. DUNNE. Well, I must identify whether the witness has put it as a result of speculation.

The COURT. I will overrule the objection.

The WITNESS. I arrived at my figure, first, by taking the raw land as I saw it——

Mr. DUNNE. No. Will you first answer the question? I will ask the reporter to read it to you [question read].

A. No, sir. I did not mean to be understood for a moment that after this property had been improved, as Mr. Lawson suggested, and was put upon the market in its improved condition, that I was then valuing it at $5,000 with all these improvements upon it.

The COURT. I understood you to say it was an estimate less the value of the capital put into it?

A. No; I don't think I did. I don't think I said that. I didn't intend to say that, if I was understood as having said that.

Mr. DUNNE. Q. In considering the value as of August 1st, 1917, did you go beyond or include anything other than the uses to which that raw land could be put as of that date?

A. I did not.

The COURT. The motion to strike will be denied.

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The COURT. Call your witness. The jury is present.

Mr. DUNNE: We rest, your Honor.

The COURT. The objection that the plaintiff made to the admissibility of evidence when the first witness was called on the stand, will be overruled, and exception entered.

(The objection referred to by the court is that made on page —— in the testimony of the witness, Howard C. Holmes.)

G. E. GARDNER, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DENIS:

My business is that of a realty broker and appraiser; I have been such about 20 years. My residence during that time has been in Los Angeles. During that 20 years I have made appraisals for the city of Los Angeles, for Los Angeles County, for the Pacific Electric Railway, and for the Los Angeles County flood-control district, and for various individuals, over a period of years. I appraised a strip of land 23 miles long extending along the water front north of Santa Monica, which was under condemnation for road purposes. I appraised a strip of land over the San Fernando Valley, which was condemned for the same purpose, also a strip through the Sunland district under condemnation for road purposes. I appraised a strip of land between the city of Los Angeles and Venice for a drainage district. I appraised 72 acres lying next to the harbor in San Pedro,

152 adjoining the submarine base reserve, a part of which was subdivided and part in acreage. I appraised a thousand lots lying along the Long Beach and Wilmington Harbor. I appraised a strip of land for the Los Angeles County flood-control district through the Clearwater Hines district, running through about 25 different ranches. I was appointed referee by Judge Wood, of Los Angeles County, to fix a value on a parcel or strip of land running through about 25 owners in the Fruitland district. I am the appraiser now of the Los Angeles County flood-control district, and for them I have just completed the appraising of a strip through the

industrial district of the city of Long Beach, 720 feet wide, containing about 1,200 different parcels. I am also the purchasing agent of the flood-control district, and for them I have purchased about 75 per cent of that property at my appraised price. Part of that property is tideland; there is about 35 acres of that property that is tideland, adjoining tide water. I appraised properties on both sides of the street for the proceedings to widen Sixth Street in Los Angeles, from Olive Street to Figuero, and various other parcels. I have investigated the value of North Island, which is in litigation here. I began my investigation into the condition and value of North Island in the first part of December last year. I visited the island and made a careful inspection of it, taking into consideration its various exposures and the condition of the soil and the adaptability of the soil to cultivation, and its general topography, and the possible expense necessary in subdivision in any form for marketing. I investigated conditions on Coronado Island, interviewing a large number of realty operators, bankers, business men and city officials, with the view of ascertaining what the market value of Coronado Island properties were, what the demand was, and what the supply was for that demand, the prices at which Coronado Island properties had been sold and the prices at which they were available to-day. I also called on the city officials with a view to ascertaining the
153 number of transfers that were made in Coronado Island over a period of years, and the number of building permits that had been issued there, and also to discuss with them the water possibility. I also talked to two or three bankers and real estate men there regarding what they considered North Island available for, and what its probable or possible market value might be. I interviewed a large number of citizens, real estate men, business men, bankers, and city officials in San Diego, with the idea of ascertaining the condition of the realty market here, the demand for property, and the amount of property which was available to supply the demand. I called on the San Diego Harbor board to ascertain the extent of the harbor property, the water frontage, that was available, and under what terms or conditions it might be had. I also called on the secretary of the State harbor commission here for the same purpose. In determining in my own mind what North Island would be best adapted for, I considered its possibilities as a high class exclusive residence district, and with a view to investigating the market which might be available for such property in a broader field, in a broader way than San Diego and Coronado, I investigated the success that was being met with by others marketing high-class tracts in other districts—in Del Monte, where they had a campaign on for the marketing of Pebble Beach, and in Santa Barbara where Hope Ranch and Montecito and Del Mar have been offered for many years; also along the front at Santa Monica and Long Beach, in Los Angeles County. My investigation in those places was merely to determine, in my own mind, what the market might be in a broader way for high-class restricted residence lots which might be offered on North Island

in the same way or to the same purchasers that these other subdivisions were being offered. In my opinion, North Island's present use would have to be restricted to residence purposes. I believe
154 there would be a market, or there is a market, which would absorb any industrial property on North Island. I think there is plenty around San Diego Bay to satisfy the demands for a number of years. I don't believe that it would be marketed or that a market could be found, or a demand found which would absorb any portion of North Island for industrial property, and I believe that its higher use would be a residence property, and industrial property bordering on the residence property would affect the value—hurt it. I think I have stated fully the investigations that I made and the sources of information which I applied, upon which I base an opinion of its value. I have placed a value on the so-called tidal lands or submerged lands. I have investigated the tidelands around San Diego Bay, the manner in which they are offered to people who wish to use them, and the rates at which they are available. I also made an examination as to the extent of such property that would be available for use around San Diego Harbor. I believe the tidelands of North Island could be used for industrial purposes, but there is no demand for them. There is no market for them. They could not be sold to-day. There is no market value for tidelands, I mean as of August 1, 1917. I don't believe they could be marketed as tidelands. North Island might have been subdivided into small parcels for intensive cultivation—gardening, assuming that it could be watered—gardening and the planting of deciduous fruit trees. A portion of it might be placed on the market in that manner. I think I have fully stated what I have done to reach the conclusion which I have arrived at. I don't think that there is any further investigation that I made for the purpose of fixing its value. From such investigations as I have made, and have now testified to, my estimate, my opinion, as to the value of the upland, assuming the area to be 1,233 acres, is $886,400. I have been in court
155 since this trial commenced. I have heard that the area of the tidelands is 663.3 acres. My estimate of the value of those tidelands is $82,900.

Cross-examination by Mr. DUNNE:

I have never lived in San Diego. I have never carried on my realty business in San Diego. The elements of adaptability which qualify property for residential purposes are location, climatic conditions, access, soil conditions, and marketing. The elements of adaptability which qualify property for commercial use are access, convenience to commercial and industrial centers, and demand. I include in the term "access," access to water or rail, both. I inquired of the Coronado Beach Company, but I did not get the information that for its bare land sales in Coronado between 10th Street and the ocean, for the five years last past, was 38 cents per square foot, or $16,553 per acre. I got no sales from the Coronado Beach Company. I did not become informed from that company as to the sales of

average bare land between 10th Street and the bay for the last five years was 16.5 cents per square foot, or $7,187 per acre. I know where La Playa is situated. I never personally had any transaction in real estate on La Playa. I did not learn by a comparison of the actual sale figures in La Playa for the last five years that properties have been sold there for residential purposes at $3,920. I do not know where Ironton is. I know where Roseville, across the bay, is. I do not know where the district called New Roseville is. The figure that I gave for the tidal lands is $82,900 for 663.3 acres. That would be $125 per acre.

156 Redirect examination by Mr. DENIS:

I did not learn from the Coronado Beach Company of any land sales between 10th Street and the bay. I learned of a number of sales in that district, but no sales from them.

Mr. DENIS. Q. What did you learn as to sales in that district?

Mr. DUNNE. Do you mean by the Coronado Beach Company?

Mr. DENIS. Sales in that district between 10th Street and Bay Street.

Mr. DUNNE. I only asked him as to the Coronado Beach Company, the defendant in this case. I did not ask him about any other transaction.

The COURT. I think that is the same question that arose upon the examination of the defendant's witnesses, where they sought on redirect examination to elicit what properties had been sold for. The ruling will be the same. I will sustain the objection.

The WITNESS. I base my opinion of the value of the tidelands, of $125 an acre, upon the fact that before they could be sold to anybody for use a considerable sum of money would have to be spent on them, and that it would be a number of years before they could be used—before there would be a market that would make a demand for them—make it possible to sell them at all. In that connection I examined the value at which other tidal lands on San Diego Bay were held; and from such added information as that I reached the conclusion that those lands were worth $125 an acre. In that estimate I did not take into consideration the volume of business in San Diego in August, 1917. I didn't consider the volume of business done in 1917 as being a fair basis. I took into consideration the vol-
157 ume of business done in San Diego in 1913. The business in the harbor of San Diego fell off in 1917 much less than it was in 1913—not a normal year. I did consider the volume of business done in San Diego Bay in 1913, which was a normal year. It was more than in 1917. The volume of business fell off after the war started—that is, after 1914.

A. O. KELLIHER, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DENIS:

My business and occupation is real estate broker and appraiser. I have been in that business about 18 years. Nine years in Los

Angeles and nine years in the State of Minnesota. Before coming to California, in Minnesota I appraised land for the Northern Pacific and the Minnesota International Railway. I was in the town-site business, platting and owning a town site of my own called Kelliher, Minnesota; had an interest in another town site in the same locality; bought and sold real estate for myself, appraised real estate for banks. Since coming to Los Angeles I have bought and sold real estate for myself and others. I was subdivision manager for two years, handling several subdivisions for the California Real Estate & Building Company; four years subdivision manager for the Janss Investment Company. I appraised lots for different private individuals in Los Angeles banks. I appraised a strip of land for the Los Angeles County flood control in different, principally through the industrial district of Long Beach, a strip 720 feet wide, 4½ miles in length, comprising over 1,200 parcels of land, in-
158 cluding several acreage pieces; appraised about 25 acres of land for the flood-control district in the fruit district near Vernon; appraised several hundred lots for the Bixby Estate at Long Beach, and various other small appraisals. I am also purchasing agent and appraiser for the Los Angeles County flood control. I have examined North Island. I commenced my examination of North Island, with a view to testifying to its value in this case, in the month of December, 1919. I visited the island and got a general view of the land, the lay of the land, and the surrounding country; investigated Coronado Island, the different subdivisions along and around San Diego, around Los Angeles, Long Beach, Montecito, Del Monte, Pasadena, Santa Monica. With reference to the value of North Island, I investigated a great many sales of property in Coronado that have been made in the last few years, and also property that is now being offered for sale by different real estate firms in Coronado; investigated the offerings and sales of property surrounding the water front in San Diego down as far as National City. The best purpose for which the property can be put to is residential purposes. I don't think there was any other use it could be put to in 1917. I have investigated North Island as to its use for industrial purposes. I reached the conclusion that there is plenty of industrial property to take care of San Diego for a long time to come, in 1917, and up to the present time. If the water, which I guess they have, could be gotten there, I think it might be put to farming use, to a certain extent. I have investigated the value of the tidelands, amounting, as has been agreed here, to 663 acres. To determine the value of those tidelands I investigated the tidelands that are in other parts of San Diego or in San Diego. I made inquiries from the harbor commission, the harbor master, and a few bankers and real estate men. I made inquiry as to how much
159 available land there was at San Diego, tideland at San Diego, in 1917. In my opinion the value of the uplands of North Island, consisting of 1,233 and a fraction acres, is $986,400. I have formed an opinion as to the value of the tidelands, consisting of 663.3

acres; and in my opinion the value of such tidelands is $100 an acre, $6,630.

PAUL A. CRIPPEN, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DENIS:

I make a business of appraising real estate. I have been engaged in that business the last twelve years, solely, and prior to that time for six years in the real-estate brokerage business—18 years, all together. I have appraised property of all classes in all of the cities and more prominent towns in the southern part of California, and lands of all kinds and classes in the southern part of California. I have appraised property in all of the beach towns—for instance, Santa Monica, Ocean Park, Venice, Del Rey, Hermosa, Manhattan Beach, Redondo Beach, San Pedro, Wilmington, Long Beach, Naples, Bay City, Sunset Beach, Huntington Beach, Newport Beach, Balboa, and in one instance property in Coronado, and in one instance property in San Diego. I have been employed by all of the railroad companies running in and out of Los Angeles, in the appraisement of properties where rights of way were to be secured. I have been employed by the city of Los Angeles, by the county of Los Angeles, by the State of California in numerous cases, to
160 testify as to values of properties. I was employed by the city of Los Angeles on the Power Line right of way, the Owens River Power Line right of way, from Saugus into Los Angeles, a distance of about thirty miles. I was employed by the county of Los Angeles to fix a value on the right of way over the Malibu Ranch, leading from about eight miles north of Santa Monica, a distance of about 22 miles to the Ventura County line. I was employed by the city of Los Angeles to appraise property adjoining the submarine base at the port of San Pedro, which the city proposes to donate to the United States Government. I have been employed by the Los Angeles County flood-control district to fix values on lands in their right of way for flood-control channel, leading from the Cerritas Trestle north of Long Beach, down through the industrial district of Long Beach to the ocean, a distance of about four miles. I have been appointed by the courts of Los Angeles County as a receiver in partition, a referee in partition, and as referee in a number of condemnation suits. I have testified and been employed by defendants in probably 200 condemnation suits, perhaps more. I have made appraisements for individuals for various purposes, for instance, in the industrial town of Torrance for a bond issue, and private appraisements for all purposes in the matter of loans, so that purchasers or those who were engaged in deals in real estate may know the value of real estate, and in various kinds of lawsuits over real estate. In the beach towns that I have referred to I had occasion to examine into and give my opinion as to the value of tidelands, or lands adjacent to tidelands. In San

Pedro properties on the water front and immediately back of the water front; and in Wilmington, and in the new harbor of Long Beach, properties on the water front and adjacent to the water front, reclaimed tidelands. I have made an investigation of facts
161 and surroundings upon which I base an opinion as to the value of North Island. I started in in December of last year on my investigation of the conditions of North Island and San Diego. I first investigated the land in regard to its location and elevation and topography, the means of access, the soil conditions and water conditions, its exposure to ocean and bay, its distance from San Diego proper, and the climatic condition, its relation to South Island, its comparison to South Island in character and size, and its adaptability. I interviewed property owners on South Island; I talked to bankers in Coronado and in San Diego as to their opinion of the values of San Diego properties and the use to which North Island might be put, and what they considered to be the value of Coronado property with regard to making loans. I talked with a number of real estate owners and operators having property in Coronado for sale. I ascertained the properties that had been sold by various operators there, and the prices at which said properties had been sold; the number of properties in a general way for sale, and the prices at which many were offered for sale. I considered as a matter of comparison the improvements on North Island in the way of streets and sidewalks and curbs, sewers, gas, water, electricity. I took into consideration the way that the trees and shrubs and flowers and lawns are growing on Coronado Island, to indicate what might be done with North Island. I talked with a number of property owners and real-estate operators in San Diego to determine the extent of residence properties that had been subdivided and offered for sale, what portion had been sold and what portion was still for sale, and what the demand was—to determine what might be the market for a subdivision of North Island. I talked with property owners, with the State harbor commissioner, Mr. Gross, and with harbor commissioners of the city relative to the city's tide-
162 lands, and Mr. Gross of the State harbor commission relative to the State's tidelands in San Diego Bay to ascertain the extent of those tidelands, and upon what terms and conditions they might be had. I talked to the land department of the Santa Fe Railroad, the land department of that company having for sale or for lease lands at San Diego on the water front, and I talked with him regarding leases that they had made on some of their properties on the water front. I investigated one or two sales that had been made of property on the water front, not of submerged lands, but of property back of submerged lands—for instance, the Hercules Powder Company's property and Mr. Blackman's property at National City. I took into consideration the development of the industrial features along the harbor of San Diego, and took into consideration what the requirements were as indicated by the demand for properties around the harbor to determine what the possibilities

were for the use of North Island for industrial uses, commercial uses. I think that pretty nearly covers the investigation, with the exception that I also considered properties for sale on Point Loma and in other districts outside of San Diego to determine what the market was for high-class residence property. I examined into the value of properties—sales that had been made and properties offered for sale—upon Coronado Island. I spoke to one banker in Coronado and two in San Diego on that subject. I examined the records of transfers of property. I found out the number of transfers that had been made in Coronado property for a number of years, also the number of building permits, and the value of those buildings as indicated by the permits. I ascertained how much of the original subdivision of Coronado City remained in the ownership of the defendant here from the city assessor of Coronado.

Q. What percentage of the whole was that?

A. He told me about 40 per cent.

163 Mr. DUNNE. Well, I object to that as incompetent, what the assessor told him, and move to strike it out.

The COURT. It will be stricken out.

The WITNESS. From my investigations, and to which I have referred, I am able to state to what uses this property can be put, or, in other words, what it is best adapted for. To my mind its only use for any immediate future—that is, figuring as of August, 1917—was to cut up into country-home sites larger than the ordinary city lot, and sell off as the demand required, or as the market would absorb such sizes as there was a demand for. By so doing the excessive cost of high-class improvements, which would be necessary for the ordinary ultra-select residence subdivision, would be done away with to a very large extent, and such improvements as were required would be put in as the necessity demanded. I think its only use, and best use, the highest use, at that time was to be sold in parcels of, say, from five to ten acres, as the demand warranted. I would call that a residential use. Perhaps it would also partake of a small-farm use, not so much farms from a commercial standpoint as farms from the standpoint of the country gentleman who desired acres around his home to beautify, and perhaps also to indulge in gardening and the raising of trees and flowers and things of that kind. It may be adapted to the use of industries, and commercial, but to my mind there is no market for its use in that manner at this time or any immediate future. The demand is not there for it, and to my mind its consideration for those purposes is something considerably in the future. It might be cut up into subdivision similar to that on South Island; but, as I stated before, I think the excessive cost of putting in street improvements and sidewalks and curbs and paving and sewer and water, and a ferry property to make it accessible, and all those things, particularly since 1917, when

164 labor and materials of all kinds are so high—I think the excessive cost of putting in a subdivision of that character would have made it almost prohibitive; the selling price of lots would have

had to be so high, I think the market would not have absorbed them. It was available, but I think it would not be practical to subdivide it in that manner and expect to sell it in a reasonable time and to make a profit on it. From all that I have learned about North Island I have formed an opinion as to its value. I figure the value of the 1,233 acres of upland at $986,500. I have formed an opinion as to the value of the tidelands, consisting of 663.3 acres, on which I put a nominal value of $100 an acre. That would be $66,330.

Cross-examination by Mr. DUNNE:

The elements of adaptability which qualify property as having commercial value are location and accessibility, and its nearness to a point of business, where business is done. Railroads are necessary for industrial properties almost always, and for certain classes of industrial property water front is necessary. The presence of lands by way of geographical situation on a bay and harbor, such as San Diego Bay, is a contributive element of adaptability for commercial purposes. I never transacted real business in San Diego. I have not been in the brokerage business for more than 12 years. In the course of my investigation I did not inquire of the Coronado Beach Company, the defendant in this case, what the average selling price per square foot had been for its lots in Coronado, between Tenth Street and the ocean; or what its sales had been, its average selling price per square foot for the last five years of its lands in Coronado between Tenth Street and the bay.

165 Redirect examination by Mr. DENIS:

In matters of this kind I never inquire from one of the parties interested in the case.

THOMAS O'HALLARAN, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. DENIS:

My business or occupation is State inheritance tax appraiser. I appraise other property than at the request of the State. I have been engaged in appraising property since June, 1911. I appraised the Santa Margarita ranch, 242,000 acres; the Jamul ranch, of a little less than 10,000 acres; the San Felipe ranch, of 10,000 acres; and recently, all of the lands belonging to the San Diego Land Company in Chula Vista—a system of over 26,000 acres, reaching down to the bay to National City. That was in February of this year. I have appraised lands and lots in all parts of San Diego, all parts of Coronado, ranches all over the county. I live in San Diego and have lived here for 18 years. I was in the real estate business from 1905 to 1911, and since that time my business has been appraising real estate. I appraised one hundred pieces of country property and a hundred pieces of city property for the State tax commission four years ago. I think there were some tidelands included in the San Diego Land Company's holdings. I have had occasion to appraise the value of tidelands around San Diego Bay just in lots. Part

166 of San Diego is under the bay down here in lots, and once in a while some of those come up in an estate. I know North Island. I saw it the first time about 17 years ago. I have seen it frequently since. I have fished all around it, off from the edge of it, and on all sides of it. I have been on it a number of times. I think I know what uses it is adaptable for. It is adaptable for residential purposes; possibly for deciduous fruits. I have made no examination as to its use for industrial purposes. I have always understood that there was enough land on this side for all industrial purposes for some time. I have been over there and all over it a few times, investigated as to the soil, what could be done with it, comparing it with South Island—Coronado—as to how trees would grow on it, whether it would be necessary to have trees with surface roots or whether tap root trees would grow, and some investigation as to the question of water. I was employed by the Government to make this investigation some time the first of March. From the investigation that I have made, and from such things as I have theretofore known about the island, I am able to give an opinion as to its value as of August 1, 1917. The value of the upland, consisting of 1,233 acres, on August 1, 1917, was a million and forty-six thousand dollars. I have made an investigation as to the value of the 663 acres of tidelands. I made inquiries as to the value of the tidelands on this side of the bay. I heard the testimony of the several expert witnesses who testified in this case since its beginning. In my opinion, I know the value of those 663 3 acres of tidelands. The value of those tidelands, as of August 1, 1917, is $66,300.

The plaintiff rests.

167 G. E. GARDNER, recalled as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Redirect examination by Mr. DENIS:

Referring to the meadow and marsh lands connected with, belonging to, and a part of North Island, amounting to 207 acres and a fraction, I am prepared to testify to the value of such lands from the investigation and examination that I made, and to which I referred on yesterday. The value of those lands is $25,875, at the rate of $125 per acre.

Mr. DENIS. If your honor please, I think there will be no difficulty in our stipulating that the other Government witnesses, to wit, Messrs. Kelliher, Crippen, and O'Hallaran, will each testify to the value of these 207 acres, the same amount that they placed upon the submerged lands, to wit, one hundred dollars per acre.

Mr. DUNNE. No objection.

The COURT. Now, the 1,233, is that an exact figure?

Mr. DUNNE. It is 1,232.93.

The COURT. All right. Well, proceed, gentlemen, with the argument.

168 *Instructions to the jury.*

The COURT. Gentlemen of the jury, the Government of the United States in the exercise of its functions as a Government has the right and the power to condemn the land of a private citizen; that is, to take it for the use of the public, but the Constitution provides that private property shall not be taken for public use without just compensation.

The time with reference to which the value of the property in suit is to be fixed is the first day of August, 1917, being the date on which the plaintiff took possession of the property for public use.

The measure of the damage or compensation in this case is the market value of the land on August 1, 1917.

The language used in the fifth amendment of the Constitution of the United States, in respect to the matter of ascertaining the value of property taken by the Government for public use from private owners, is aptly chosen. The entire amendment is a series of negations, denials of rights of power in the Government, the last, the one in point here, being "nor shall private property be taken for public use without just compensation." The noun "compensation" standing by itself, carries the idea of an equivalent. Thus, we speak of damage by way of compensation, or compensatory damages, as distinguished from punitive or exemplary damages, the former being an equivalent for the injury done, and the latter imposed by way of punishment. So that if the adjective "just" had been omitted, and the provision was simply that property should not be taken without compensation, the natural import of the language would be that the compensation should be the equivalent of the property; and this is made emphatic by the adjective "just." There can, in view of the combination of those two words, be no doubt that the com-

169 pensation must be a full and perfect equivalent for the property taken, and this just compensation, it will be noticed, is for the property and not to the owner. It is the actual value of the land with all its adaptations to general and special uses, and not its prospective or speculative value based upon future expenditures and improvements, that is to be considered.

While the law requires that when property is condemned a full and fair equivalent for the property taken should be paid, the jury should understand that this sum is not to be determined by the use to which the land in question was put at the time of the taking. That is to say, as to whether the use at the time of the taking was profitable or unprofitable, or whether it was being used at all. The use to which the property was put at the time of the taking may not have been the best use to which the property could be put, nor is the owner bound to continue any particular use or to put it to any use whatever. That is not the test. The owner is entitled to receive such a sum as will fully compensate him for the fair market value of the property at the time of the taking. It is proper to consider for what purposes the land might have been used to advantage in

order to determine for what price it would be sold. It is proper to inquire what the tract is worth, having in view the purposes for which it is best adapted. But it is the tract, and not the lots into which it might be divided, that is to be valued. You are to value the tract of land, and that only. You are not to determine how it could best be divided into building lots, or to conjecture how fast they could be sold or at what price per lot. A speculator or investor, in deciding what price he could afford to pay, would consider the chances and probabilities of the situation as then actually existing. You should do the same thing. You are not to inquire what a speculator owner might be able to realize in the future, but
170 what a present purchaser would be willing to pay for it in the condition it was at the time of the taking. If the property is available for building lots or available for commercial purposes or wharves or docks or terminals or industries, or any other legitimate use, even though it may not be used for any of those purposes, or may be left unused by the owner, such availabilities are all to be considered, and they should enter into the estimate of the compensation which must be paid for the land taken. Mere speculative values and profits in the manipulation of the property are, of course, to be excluded. The condition of the property, the use to which it may be put, having regard to the existing advantages for making a practical use of the property and such advantages as may be reasonably expected in the immediate future, are all matters for consideration in estimating the value of the land. But to attempt to ascertain the value by estimating the cost of improvements necessary for its use for a particular purpose, the cost of subdivision and sale, the prospect of sales and estimated profits and increased demands through growth of population, would be speculative. In other words, the value can not be determined by taking into consideration what would be the earning power of the property after a large investment of capital is made.

By the term "market value" is meant not what the owner could realize at a forced sale, but the price that he could obtain after reasonable and ample time, such as would ordinarily be taken by an owner to make a sale of like property.

In determining the market value of the land in controversy you are not bound by the opinion as to such value expressed by any one or more of the witnesses who have testified in the case. It is proper that you should consider such testimony and give it such weight and credit as in your judgment it deserves, but if in your judgment the value fixed by one or more of the witnesses who have testified
171 in the case is not reasonable, you should disregard it and find such amount as in your judgment would be reasonable from the facts that you believe to be established by the evidence in the case.

While you should take into consideration any evidence in the case tending to show what the land in controversy is specially adapted to any particular purpose or use, you should consider this only to

the extent that such adaptability may affect the market value of the property; but you will not be justified in awarding the defendant compensation based upon an adaptability of the property to any special purpose or use which in your judgment exceeds the actual market value of the land.

The burden of proof as to the actual market value of the land sought to be condemned in this action rests upon the defendant, which it is its duty to establish to your satisfaction by a preponderance of the evidence.

In determining the weight to be given by you to the opinions of the various witnesses as to the actual market value of the land in question, you may consider, among other things, the familiarity shown by each witness with the particular property; you may consider the testimony given by each of such witnesses as to the investigations made by each witness in the matters that would ordinarily tend to make such witnesses familiar with such property and its value; and you may consider the character and extent of such investigation for the purpose of determining the value and weight that you may, in your discretion, attach to the opinions of the witnesses.

In determining the amount of compensation which should be awarded for the property taken, you must not adopt the plan of taking the aggregate of the sums testified to by the various witnesses for the value, and dividing such aggregate sum by the number of such witnesses, and awarding by your verdict the
172 average thus obtained. Nor can you arrive at a verdict in this case by adding together the sums believed by individual jurors to be the market value and dividing such aggregate sum by twelve, and fix such sum as the market value of the property. This does not mean, however, that the opinions of the various witnesses should not be regarded by you. You are to consider all the evidence, and after weighing the same fix upon such value as in your judgment represents the fair market value of the property as of August 1st, 1917.

While you must follow the court's instructions as to the law of the case, you are the sole judges of the facts and the credibility of the witnesses: and if the court expresses an opinion or comments either upon the facts or the credibility of witnesses, you are not bound by such opinion or comments, and should exercise your own independent judgment in such matters.

Among the circumstances to be considered by you in passing upon the credibility of witnesses are their relation to the case and its parties, their motives, and their manner upon the witness stand. In this litigation many witnesses have been called by the parties on each side that are often called expert witnesses; that is, witnesses who are called upon to express an opinion concerning the value of the land in controversy. In determining the weight to be given to such opinions you should consider the fact that no person can be convicted for perjury by reason of his testifying to an opinion con-

cerning the value of real estate, except upon his own admissions or confessions.

Plats and maps of the property in question have been received in evidence and should be considered by the jury, not for the purpose of exhibiting some contemplated improvements or speculative deal,
but for the purpose of illustrating the witnesses's testimony
173 concerning the particular uses to which the property may be
adapted in his opinion, and by way of showing the capabilities of such property. With this limitation and from this point of view maps and plats have been admitted in evidence in this case, and as thus limited and qualified it is proper for the jury to consider them for such illustration and enlightenment as they may afford touching the uses and capabilities of the property.

The land in question whose value you are to fix, and which has been described in the act of Congress as the whole of North Island, includes not only the upland as it has been termed, but also the tidelands in question. The ownership of the Coronado Beach Company in the whole of North Island does not stop at the line of ordinary high tide. That ownership is extended out by the United States patent and by the law of this case to the anchorage of ships, and the line of that anchorage is precisely defined by the United States survey accompanying the patent, and which has been delineated before you upon the maps admitted in evidence. Such tidelands comprise, in round figures, 663 acres, and in those tidelands the Coronado Beach Company has all the rights of full ownership, subject to the reasonable public regulation, and in this respect I instruct you that it is a reasonable public regulation of the United States Government that the bulkhead line be fixed as it has been, beyond which a solid fill is not permissible without consent of the Government, and that it is likewise a reasonable public regulation that the pierhead line be fixed as it has been fixed, and between that line and the bulkhead line open wharves may be constructed and used by the owner. But it is a property right and an attribute of the ownership of the Coronado Beach Company that it may construct wharves, docks,
piers, warehouses, terminals, or other improvements on these
174 submerged lands, subject to these regulations; and in so con-
structing such improvements the Coronado Beach Company would be exercising the right to use its privately owned tidelands. And you are further instructed that the title to these tidelands was not derived by the Coronado Beach Company from the State of California, and that the State of California is not the owner thereof, but that the same were derived from the former Government of the country, and that the title so derived has been confirmed by judicial decree and conclusively established and defined as against the Government by this survey and patent.

This case, like all cases triable in a court of justice, should be determined by the jury upon the evidence before them, and upon that alone, subject to the rules of law laid down for your guidance

by the court; and no juror acting conscientiously can base his verdict upon any other consideration. Juries are empanelled for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true that each juror must decide the matter for himself, yet he should do so only after consultation and consideration of the case with his fellow jurors, and he should not hesitate to sacrifice his views or opinions of the case when convinced that they are erroneous, even though in so doing he defer to the views or opinions of others.

The form of verdict, general verdict, which you are directed to return, will be as follows:

"We, the jury in the above-entitled case, find the fair market value of the land of North Island, as of August 1st, 1917, was ———— dollars," inserting the amount of dollars. "Dated April 21, 1920," and let the foreman of the jury sign it.

And the court directs you that if you return a general ver-
175 dict you shall return a special verdict. This special verdict, the form of which is hereby submitted to you, is in the form of interrogatories, which is the practice in the State of California. The first interrogatory is as follows:

"No. 1. What was the fair market value on August 1, 1917, of the land lying above high-water mark, containing 1,232.93 acres, more or less, referred to as mesa land?"

That you will answer. A blank space is left for the amount.

"Interrogatory No. 2. What was the fair market value on August 1, 1917, of the 207.24 acres lying above high-water mark, referred to as meadow, marsh, and beach land?"

There is a blank space left for the answer.

"No. 3. What was the fair market value, on August 1, 1917, of the lands lying below high-water mark, consisting of 663.3 acres, more or less, referred to as tide or submerged lands?"

You will fill in the blank and let the foreman sign it and date it.

When you retire to consider of your verdict, elect one of your number foreman; and when you shall have agreed upon a verdict let the foreman sign it and return into court.

You may not agree upon a verdict or answer any of these questions unless you all concur in the verdict or answer.

The COURT. Are there any exceptions, gentlemen, to the charge to the jury?

Mr. DENIS. The Government has none, excepting the refusal of the court to charge as requested by the Government in the last instruction, in regard to tidelands. And then the Government also desires to except to the instruction with reference to the title to the submerged lands. With these exceptions I know of no other instruction.

The COURT. You particularly refer to the instruction that
176 the patent extends out to the anchorage? Including 663 acres?

Mr. DENIS. The whole of that instruction; yes, your Honor; those are the only two.

The instruction given by the court and excepted to by plaintiff reads as follows:

"The land in question whose value you are to fix, and which has been described in the act of Congress as the whole of North Island, includes not only the upland, as it has been termed, but also the tidelands in question. The ownership of the Coronado Beach Company in the whole of North Island does not stop at the line of ordinary high tide. That ownership is extended out by the United States patent and by the law of this case to the anchorage of ships, and the line of that anchorage is precisely defined by the United States survey accompanying the patent, and which has been delineated before you upon the maps admitted in evidence. Such tidelands comprise, in round figures, 663 acres, and in those tidelands the Coronado Beach Company has all the rights of full ownership, subject to the reasonable public regulation, and in this respect I instruct you that it is a reasonable public regulation of the United States Government that the bulkhead line be fixed as it has been, beyond which a solid fill is not permissible without consent of the Government, and that it is likewise a reasonable public regulation that the pierhead line be fixed as it has been fixed, and between that line and the bulkhead line open wharves may be constructed and used by the owner. But it is a property right and an attribute of the ownership of the Coronado Beach Company that it may construct wharves, docks, piers, warehouses, terminals, or other improvements on these submerged lands, subject to these regulations; and in so constructing such improvements the Coronado Beach Company would be exercising the right to
177 use its privately owned tidelands. And you are further instructed that the title to these tidelands was not derived by the Coronado Beach Company from the State of California, and that the State of California is not the owner thereof, but that the same were derived from the former Government of the country, and that the title so derived has been confirmed by judicial decree and conclusively established and defined as against the Government by the survey and patent."

The instruction requested by the Government and refused by the court, to which refusal plaintiff duly excepted, reads as follows:

"You are instructed that the State of California is the owner of all land bordering upon tide water within the State which is below the ordinary high-water mark. Therefore the private ownership of land bordering upon tide water in this State can only extend to the ordinary high-water mark."

Mr. DUNNE. And, if your Honor please, the only exception we care to reserve is an exception to the returning of anything other than a general verdict. I really do not think the case requires it, and I think I would like to save the point.

(The bailiffs were sworn to take charge of the jury, and the jury retired to consider of their verdict.)

Thereafter the jury returned its verdict, and answers to special interrogatories directed by the court, as follows:

Verdict.

We, the jury in the above-entitled cause, find that the fair market value of the whole of North Island, as of August 1st, 1917, was $5,000,000 (five million dollars).

Answers to special interrogatories directed by the court.

No. 1. What was the fair market value on August 1, 1917, of the land lying above high-water mark, containing 1,232.93
178 acres, more or less, referred to as mesa land?

Answer. $4,625,000.00 (four million six hundred twenty-five thousand).

No. 2. What was the fair market value on August 1, 1917, of the 207.24 acres lying above high-water mark, referred to as meadow, marsh, and beach land?

Answer. $45,000.00 (forty-five thousand).

No. 3. What was the fair market value on August 1, 1917, of the lands lying below high-water mark, consisting of 663.3 acres, more or less, referred to as tide or submerged lands?

Answer. $330,000.00 (three hundred thirty thousand).

179 A motion for a new trial was duly and legally made by the plaintiff herein upon the following grounds, to wit:

1. Irregularities in the proceedings of the court, by which the plaintiff was prevented from having a fair trial.

2. Irregularities in the proceedings of the jury, by which the plaintiff was prevented from having a fair trial.

3. Irregularities of and on behalf of the defendant, by which the plaintiff was prevented from having a fair trial.

4. Misconduct on the part of the jury, by which the plaintiff was prevented from having a fair trial.

5. Excessive award and damages, appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict of the jury or judgment.

7. That the verdict of the jury is against law.

8. That the judgment entered thereon is against law.

9. Errors in law occurring at the trial and excepted to by the plaintiff.

This motion was heard by the above-entitled court on the 1st day of June, 1920, and the same was denied, and an exception to said decision was thereupon taken by the plaintiff herein and allowed by the court.

180 *Specifications of errors of law occurring at the trial.*

I.

The court erred in denying the motion of the plaintiff for a new trial.

II.

The court erred in instructing the jury, as follows:

The land in question whose value you are to fix, and which has been described in the act of Congress as the whole of North Island, includes not only the upland, as it has been termed, but also the tidelands in question. The ownership of the Coronado Beach Company in the whole of North Island does not stop at the line of ordinary high tide. That ownership is extended out by the United States patent and by the law of this case to the anchorage of ships, and the line of that anchorage is precisely defined by the United States survey accompanying the patent, and which has been delineated before you upon the maps admitted in evidence. Such tidelands comprise, in round figures, 663 acres, and in those tidelands the Coronado Beach Company has all the rights of full ownership, subject to the reasonable public regulation, and in this respect I instruct you that it is a reasonable public regulation of the United States Government that the bulkhead line be fixed as it has been, beyond which a solid fill is not permissible without consent of the Government, and that it is likewise a reasonable public regulation that the pierhead line be fixed as it has been fixed, and between that line and the bulkhead line open wharves may be constructed and used by the owner. But it is a property right and an attribute of the ownership of the Coronado Beach Company that it may construct wharves, docks, piers,
181 warehouses, terminals, or other improvements on these submerged lands, subject to these regulations; and in so constructing such improvements the Coronado Beach Company would be exercising the right to use its privately owned tidelands. And you are further instructed that the title to these tidelands was not derived by the Coronado Beach Company from the State of California, and that the State of California is not the owner thereof, but that the same was derived from the former Government of the country, and that the title so derived has been confirmed by judicial decree and conclusively established and defined as against the Government by the survey and patent.

III.

The court erred in refusing to instruct the jury as requested by plaintiff as follows:

You are instructed that the State of California is the owner of all land bordering upon tidewater within the State which is below

the ordinary high-water mark. Therefore the private ownership of land bordering upon tidewater in this State can only extend to the ordinary high-water mark.

IV.

The court erred in overruling plaintiff's objection to, and admitting in evidence, a map offered by defendant and filed in said cause as defendant's Exhibit C, for the reason that said map did not merely show the uses to which the land could be adapted but was extended to speculative inquiries as to possible future uses, under circumstances which did not exist and which in the future may never exist; and for the further reason that said map included submerged lands adjacent to North Island and forming no part thereof, and consisting of 663 acres of submerged lands and 207.24 acres referred to as
182 meadow, marsh, and beach land, upon which were to be constructed, according to said Exhibit C, wharves, warehouses, docks, piers, and basins.

V.

The court erred in adjudging that the defendant in error, Coronado Beach Company, a corporation, was at the time of the commencement of this action, ever since has been, and now is, the sole and exclusive owner in fee simple of all and singular the tract of land described in said action, free and clear of any easement, estate, interest, title, claim, or demand of any character or description of plaintiff in error, in or to the same, or in or to any part or parcel thereof, for use for the defense or security of the Nation, or for any purpose whatsoever.

VI.

The court erred in adjudging that plaintiff in error had no easement, estate, interest, right, title, claim, or demand of any kind in or to the land described in the complaint for use for the defense or security of the Nation, or for any purpose whatsoever.

Now comes the plaintiff, within the time allowed by law and the stipulations of the parties hereto, and proposes and offers the foregoing, and the whole thereof, as plaintiff's engrossed bill of exceptions, containing a summary of all the evidence introduced in the case (except certain maps and diagrams, being plaintiff's Exhibits Nos. 10 and 11 and defendant's Exhibits B, C, D, E, and F, which exhibits by stipulations and order under subdivision 4, rule 8, of the Supreme Court, are transmitted to the clerk of the Supreme Court of the United States); the request for instructions submitted by the plaintiff to the court and denied by the court; the instructions given by the court to the jury and the specifications of errors of law

183 occurring at the trial; and that the same be ordered filed as a part of the record in this case.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff in Error.

It is hereby stipulated that neither plaintiff's Exhibits Nos. 10 and 11 nor the defendant's Exhibits B, C, D, E, and F, in this case need be attached to this bill of exceptions, nor inserted in the original transcripts in this case.

Dated August 9, 1920.

MORRISON, DUNN & BRODECK,
PETER F. DUNNE,
HERBERT W. CLARK,
READ G. DILWORTH,
JAS. E. WADHAM,
Attorneys for Defendant in Error.

I hereby certify the within and foregoing engrossed bill of exceptions to be a true and correct bill of exceptions, and that the same contains all the evidence introduced in the case (except certain maps and diagrams, being plaintiff's Exhibits Nos. 10 and 11, and defendant's exhibits B, C, D, E, and F, ordered to be transmitted to the clerk of the Supreme Court of the United States); the instructions given by the court, and the instructions requested by the plaintiff and refused by the court; together with the specifications of errors of law alleged by the plaintiff to have
184 occurred at the trial; and the same is hereby accordingly allowed and settled and ordered filed as a part of the record in this case.

Dated August 9th, 1920.

OSCAR A. TRIPPET,
Judge of the United States District Court.

185 (Endorsed:) No. E–34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, *vs.* The Coronado Beach Company, defendant. Proposed bill of exceptions. Filed Jul. 8, 1920. Chas. N. Williams, clerk. Engrossed and filed Aug. 9, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

186 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, plaintiff,
vs.
THE CORONADO BEACH COMPANY, a corporation, claimant and defendant. } No. E-34.

Petition for writ of error.

Comes now the United States of America, plaintiff in error, and respectfully shows that the above-entitled cause is now pending in the United States District Court for the Southern District of California, Southern Division, and that judgment therein was rendered on the 1st day of June, 1920, and entered on the 1st day of June, 1920, in the United States District Court for the Southern District of California, Southern Division, in favor of the defendant in error, The Coronado Beach Company, a corporation, for the sum of five million dollars ($5,000,000.00); that the motion for a new trial of said cause was denied on said 1st day of June, 1920, and that this cause is a proper cause to be reviewed by the Supreme Court of the United States, on writ of error.

Wherefore, the United States of America prays that a writ of error be issued in this behalf to the Supreme Court of the United States, and that the clerk of the United States District Court for the Southern District of California, Southern Division, be directed to send the records, proceedings and papers in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assign-
187 ment of errors herewith filed by the plaintiff in error may be reviewed, and, if error be found, corrected according to the laws and customs of the United States.

Dated at Los Angeles, California, this 9th day of Aug., 1920.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California;
Attorneys for Plaintiff in Error.

188 (Endorsed:) No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Petition for writ of error. Filed Aug. 9, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

189 In the District Court of the United States for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, CLAIMANT AND DEFENDANT. } No. E-34.

Assignment of errors.

Now comes the United States of America, plaintiff in error in the above-entitled cause, and files the following assignment of errors:

I.

The United States District Court, Southern District of California, Southern Division, erred in denying the motion of the plaintiff in error for a new trial, for the reason that the verdict is against law.

II.

The said court erred in denying the motion of the plaintiff in error for a new trial, for the reason that it affirmatively appeared from the evidence that the evidence is insufficient to justify the verdict.

III.

The said court erred in denying the motion of the plaintiff in error for a new trial, because it affirmatively appears from the evidence that the verdict is against the weight of the evidence.

IV.

The said court erred in refusing to instruct the jury as requested by the plaintiff in error, as follows:

You are instructed that the State of California is the owner of all land bordering upon tide water within the State, which
190 is below the ordinary high-water mark. Therefore, the private ownership of land bordering upon tide water in this State can only extend to the ordinary high-water mark.

V.

The said court erred in instructing the jury as follows:

The land in question whose value you are to fix, and which has been described in the act of Congress as the whole of North Island, includes not only the upland, as it has been termed, but also the tide-

lands in question. The ownership of the Coronado Beach Company in the whole of North Island does not stop at the line of ordinary high tide. That ownership is extended out by the United States patent and by the law of this case to the anchorage for ships, and the line of that anchorage is precisely defined by the United States survey accompanying the patent, and which has been delineated before you upon the maps admitted in evidence. Such tidelands comprise, in round figures, 663 acres, and in those tidelands the Coronado Beach Company has all the rights of full ownership, subject to the reasonable public regulation, and in this respect I instruct you that it is a reasonable public regulation of the United States Government that the bulkhead line be fixed as it has been, beyond which a solid fill is not permissible without consent of the Government, and that it is likewise a reasonable public regulation that the pierhead line be fixed as it has been fixed, and between that line and the bulkhead line open wharves may be constructed and used by the owner. But it is a property right and an attribute of the ownership of the Coronado Beach Company that it may construct wharves, docks, piers, warehouses, terminals, or other improvements on these submerged lands, subject to these regulations, and in so constructing such improvements the Coronado Beach Company would be exercising the right to use its privately owned tidelands. And you are further in-
191 structed that the title to these tidelands was not derived by the Coronado Beach Company from the State of California, and that the State of California is not the owner thereof, but that the same were derived from the former Government of the country, and that the title so derived has been confirmed by judicial decree and conclusively established and defined as against the Government by the survey and patent.

VI.

The said court erred in overruling the plaintiff's objection to, and admitting in evidence, a map offered by defendant, and filed in said cause as defendant's Exhibit C, for the reason that said map did not merely show the uses to which the land could be adapted, but was extended to speculative inquiries as to possible future uses, under circumstances which did not exist, and which in the future may never exist; and for the further reason that said map included submerged lands and other lands adjacent to North Island and forming no part thereof, and consisting of 663 acres of submerged lands, upon which were to be constructed, according to said Exhibit C, wharves, warehouses, docks, piers, and basins, and 207.24 acres lying above high-water mark and referred to as meadow, marsh, and beach land.

Wherefore, the plaintiff in error prays that the judgment rendered against the said plaintiff in error be reversed; that said district court be directed to enter a judgment that plaintiff in error is the

owner of an easement, estate, and interest in and to the land described in the complaint herein, for use of the same for the defense and security of the Nation; and that the defendant in error is the owner in fee simple of said land subject to such easement,
192 estate, and interest of said plaintiff in error; and that a new trial of said action be ordered to appraise the value of the interest of the defendant in error in said land; and for such other and further relief as to the court may seem proper in the premises.

A. MITCHELL PALMER,
Attorney General of the United States.
GEO. J. DENIS,
Special Assistant to the Attorney General.
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff in Error.

193 (Endorsed:) No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Assignment of errors. Filed Aug. 9, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy.

194 In the District Court of the United States for the Southern District of California, Southern Division.

Clerk's office.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant. } No. E-34.

Precipe for certified copy of record.

To the clerk of said court, sir:

Please issue a certified copy of the record in the above cause, consisting of the names and addresses of the attorneys;
Judgment roll, including complaint;
Answer;
Reply to answer;
Verdict and judgment;
Motion for a new trial;
Opinion or order denying new trial;
Bill of exceptions;
Petition for writ of error;
Assignment of errors;
Writ of error;
Citation on writ of error;
Precipe for transcript.

Said record to be certified under the hand of the clerk and the seal of the court.

Dated this 9th day of August, 1920.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff in Error.

195 (Endorsed:) No. E-34. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, plaintiff, vs. The Coronado Beach Company, defendant. Precipe for certified copy of record. Filed Aug. 9, 1920. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

Received a copy of the within precipe this 9th day of August, 1920.
MORRISON, DUNNE & BROBECK,
PETER L. DUNNE,
HERBERT W. CLARK,
READ G. DILWORTH,
JAMES E. WADHAM,
Attorneys for Defendant in Error.

196 In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, PLAINTIFF, vs. THE CORONADO BEACH COMPANY, A CORPORATION, defendant.	No. E-34.

Certificate of clerk United States District Court to transcript of record.

I, Chas. N. Williams, clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing 195 typewritten pages, numbered from 1 to 195, inclusive, and comprised in one volume, to be a full, true and correct copy of the complaint, answer, reply to answer, verdict and judgment, motion for a new trial, order denying a new trial, bill of exceptions, petition for writ of error, assignment of errors, and precipe for transcript in the above and therein entitled cause, also the original citation on writ of error and the original writ of error; and that the same together constitute the record in

KING FOLDOUTS/EXHIBITS ARE TOO LARGE TO FILM

said cause as specified in the said præcipe filed in my office on behalf of the plaintiff in error by his attorney of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court of the United States of America in and for the Southern District of California, Southern Division, on this 13th day of August, in the year of our Lord one thousand nine hundred and twenty, and of our Independence the one hundred and forty-fifth.

[SEAL.] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of America in and for the Southern District of California.
By R. S. ZIMMERMAN,
Deputy Clerk.

197 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE CORONADO BEACH COMPANY, A CORPORATION, claimant and defendant. No. E–34.

Stipulation.

It is hereby stipulated that a photographic copy of plat of the island or peninsula of San Diego, as surveyed under instructions from the U. S. Surveyor General by Henry Hancock, deputy surveyor, in June and July, 1867, and approved June 11th, 1869, by Jos. S. Wilson, commissioner of the General Land Office, a photographic copy of which said plat is hereto attached and made a part of this stipulation, may be made a part of the record in the proceedings on writ of error herein.

Dated September 21st 1920.

A. MITCHELL PALMER,
Attorney General of the United States,
GEO. J. DENIS,
Special Assistant to the Attorney General,
J. ROBERT O'CONNOR,
United States Attorney, Southern District of California,
Attorneys for Plaintiff.
MORRISON, DUNNE & BROBECK,
PETER F. DUNNE,
HERBERT W. CLARK,
READ G. DILWORTH,
JAS. E. WADHAM,
Attorneys for Defendant.

(Here follows photograph marked p. 198.)

(Endorsed:) No. E–34. In the Supreme Court of the United States. United States of America, plaintiff, *vs.* The Coronado Beach

Company, defendant. Stipulation. Received Sept. 29, 1920. Office of the clerk, Supreme Court, U. S.

(Endorsed:) File No. 27881. Supreme Court, U. S. October term, 1920. Term No. 524. The United States, Pl'ff in Error, vs. The Coronado Beach Company. Stipulation and addition to record. Filed Sept. 29, 1920.

(Indorsement on cover:) File No. 27881. S. California, D. C. U. S. Term No. 524. The United States of America, plaintiff in error, vs. The Coronado Beach Company. Filed September 2d, 1920. File No. 27881.

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